

CBP statement attributable to a CBP spokesperson:

The U.S. Border Patrol (USBP) has identified requirements to construct more than 700 miles of border barriers along the Southwest border. These requirements have been prioritized against currently identified funding sources to enable construction in locations where border barriers will most impact border security operations. Approximately 43 miles of new barrier construction has already been completed in high priority locations, across varied terrain and topography, with many more miles underway.

Fisher Industries has advised USBP that they have initiated construction activities on private property in the approximate area of a USBP border barrier requirement that was not prioritized under current funding. It is not uncommon for vendors to undertake demonstrations of their capabilities utilizing their own resources. We encourage all interested vendors to compete for border barrier contracts through established mechanisms to ensure any construction is carried out under relevant federal authorities and meets USBP operational requirements for border barrier.

With regard to how the U.S. Border Patrol intends to operate in the area in which the private border barrier has been erected, our posture remains as it always has - committed to completing our border security mission regardless of the terrain, topography, and infrastructure in a given location. Our agents will continue to patrol in pursuit of operational control of the Southwest border.

From (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
Sent: Tuesday, June 4, 2019 1:57 PM
To (b)(6);(b)(7)(C)
Cc (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
Subject: FW: Private border fence

(b)(6);(b)(7)(C)

I hope you had a good trip last week. See below. Anything we can share to add context? FYI, she's down there right now. Thanks (b)(6);(b)(7)(C)

From (b) (6) @wsj.com>
Sent: Tuesday, June 4, 2019 1:53 PM
To (b)(6);(b)(7)(C)
Subject: Re: Private border fence

And to follow up, the land owner here tells me that he is selling the land where the new private wall was built is being sold to the folks at We Build the Wall, with a provision in that contract that they must pursue a sale to the federal government for a \$1. Is there any ongoing negotiations with We Build the Wall to purchase that property and the accompanying infrastructure? And just in case you can share more, is there any current plan for U.S. Border Patrol or any other U.S. government employee to monitor the cameras and sensors in place along the wall line?
Thanks much.

Cheers (b) (6)

(b) (6)
Immigration Reporter
The Wall Street Journal
Los Angeles

(b) (6) (o)
(c)
Twitter (b) (6)

On Fri, May 31, 2019 at 2:36 P (b)(6);(b)(7)(C) wrote:

Hey, sorry, have been slammed all week. The statement below is all I have at this time, attributable to a CBP official. We don't have anything beyond that.

And I have a ticket in for the phone. It calls out but doesn't let external numbers in. Frustrating.

Bes (b) (6), (b) (7)(C)

CBP Statement:

The U.S. Border Patrol (USBP) has identified requirements to construct more than 700 miles of border barriers along the Southwest border. These requirements have been prioritized against currently identified funding sources to enable construction in locations where border barriers will most impact border security operations. Approximately 43 miles of new barrier construction has already been completed in high priority locations, across varied terrain and topography, with many more miles underway.

Fisher Industries has advised USBP that they have initiated construction activities on private property in the approximate area of a USBP border barrier requirement that was not prioritized under current funding. It is not uncommon for vendors to undertake demonstrations of their capabilities utilizing their own resources. We encourage all interested vendors to compete for border barrier contracts through established mechanisms to ensure any construction is carried out under relevant federal authorities and meets USBP operational requirements for border barrier.

With regard to how the U.S. Border Patrol intends to operate in the

area in which the private border barrier has been erected, our posture remains as it always has - committed to completing our border security mission regardless of the terrain, topography, and infrastructure in a given location. Our agents will continue to patrol in pursuit of operational control of the Southwest border.

From [REDACTED] (b) (6) [REDACTED]@wsj.com>

Sent: Friday, May 31, 2019 1:32 PM

To [REDACTED] (b)(6);(b)(7)(C)

Subject: Re: Private border fence

Following up on this. Also, your number still doesn't work. And need to add to the below, Kris Kobach at We Build the Wall said yesterday that the fence comes complete with lights, cameras and sensors and they will turn over "a turnkey operation" to you with a "smart fence." So, will CBP be accepting this "turnkey operation" and if so, what is the procedure for accepting a \$6 million to \$8 million piece of infrastructure that you neither built, oversaw or asked for?

Thanks.

[REDACTED] (b) (6)

Immigration Reporter

The Wall Street Journal

Los Angeles

(b) (6)^(o)
[REDACTED] (c)

Twitter [REDACTED] (b) (6)

On Tue, May 28, 2019 at 12:50 P [REDACTED] (b) (6) [REDACTED]@wsj.com> wrote:

Thanks for your help with this [REDACTED] (b)(6), (b)(7)(F) As I mentioned, I am trying to run down a few things on the stretch of fencing/wall being built in New Mexico, just east of Monument 1.

Will CBP have any roll in securing the privately-built structure? I know there is a maintenance team responsibility for fence/wall repairs in the area, will those efforts include this structure?

Will this structure inhibit or otherwise impact the Border Patrol's access to the stretch of border where this structure has been built?

Thanks in advance for your help.

Cheers (b) (6)

(b) (6)

Immigration Reporter

The Wall Street Journal

Los Angeles

(b) (6)(o)
(c)

Twitter (b) (6)

From: (b)(6);(b)(7)(C)
Sent: Tuesday, January 29, 2019 2:14 PM
To: (b)(6);(b)(7)(C)
Subject: RG (b)(7)(E) ESR: Media Presence i (b)(7)(E) (Initial)

Evolving Situation Report

National Media Presence i (b)(7)(E)

January 29, 2019, 1230 hrs.

(b)(7)(E), Texas (Zon (b)(7)(E)

GPS Coordinates: (b)(7)(E))

SIR: Pending

INITIAL

SITUATION:

On January 29, 2019, at approximately 1230 hrs., Agents assigned to Zon (b)(7)(E) near (b)(7)(E) contacted th (b)(7)(E) Tactical Operations Center (b)(7)(E)-TOC) concerning media presence in the area. Agents stated that Breitbart News Reporter Brandon Darby was actively recording during the apprehension of a group of aliens on (b)(7)(E) and (b)(7)(E). Mr. Darby stated that he was escorting a group of Congressional members but had intentionally not notified the Rio Grande Valley Sector Public Affairs Office. Mr. Darby also stated that he had authorization to be in the area from a gentlemen by the name o (b)(6)

TIMELINE:

1230 hrs. Agents assigned to Zon (b)(7)(E) near (b)(7)(E) contacted th (b)(7)(E) Tactical Operations Center

From: RGV-PAO
Sent: Tuesday, January 29, 2019 2:26 PM
To: RGV Public Affairs; RGV Comms Supervisors
Subject: FW: RG (b) (7)(E) ESR: Media Presence i (b) (7)(E) (Initial)

From (b)(6);(b)(7)(C)
Sent: Tuesday, January 29, 2019 1:26:19 PM (UTC-06:00) Central Time (US & Canada)
To: RGV-PAO
Cc (b) (7)(E) PAIC (b)(6);(b)(7)(C)
Subject: FW: RG (b) (7)(E) ESR: Media Presence i (b) (7)(E) (Initial)

Good afternoon RGV PAO personnel.

FYSA.



(b)(6);(b)(7)(C)
Special Operations Supervisor
(b) (7)(E) Border Patrol Station
Rio Grande Valley Sector
(b) (7)(E)
TO (b)(6);(b)(7)(C) GS (b)(6);(b)(7)(C) PS (b)(6);(b)(7)(C) F: (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)

Fro (b)(6);(b)(7)(C) >
Sent: Tuesday, January 29, 2019 1:18 PM
T (b) (7)(E) ES (b) (7)(E) (b) (7)(E) TO (b) (7)(E)
Subject: FW: RG (b) (7)(E) ESR: Media Presence i (b) (7)(E) (Initial)
Importance: High

Evolving Situation Report
National Media Presence i (b) (7)(E)
January 29, 2019, 1230 hrs.
(b) (7)(E), Texas (Zon (b) (7)(E)
GPS Coordinates (b) (7)(E)
SIR: Pending
INITIAL

SITUATION:

On January 29, 2019, at approximately 1230 hrs., Agents assigned to Zon (b) (7)(E) near (b) (7)(E) contacted the (b) (7)(E) Tactical Operations Center (b) (7)(E)-TOC concerning media presence in the area. Agents stated that Breitbart News Reporter Brandon Darby was actively recording during the apprehension of a group of aliens on (b) (7)(E) an (b) (7)(E). Mr. Darby stated that he was escorting a group of Congressional members but had intentionally not notified the Rio Grande Valley Sector Public Affairs Office. Mr. Darby also stated that he had authorization to be in the area from a gentlemen by the name of (b) (6).

TIMELINE:

1230 hrs. Agents assigned to Zo [REDACTED] (b) (7)(E) contacted th [REDACTED] (b) (7)(E) Tactical Operations Center [REDACTED] (b) (7)(E)-TOC) concerning media presence in the area.

1232 hrs. SBP [REDACTED] (b)(6);(b)(7)(C) responded to the area for further inquiry.

1240 hrs. Agents advised that Breitbart News Reporter Brandon Darby was actively recording and interviewing aliens apprehended near [REDACTED] (b) (7)(E) an [REDACTED] (b) (7)(E)

1240 hrs The Rio Grande Valley Sector Public Affairs Office and the the Rio Grande Valley Sector Operations Center were notified.

Updates to follow

This ESR was reviewed and approved by W [REDACTED] (b)(6);(b)(7)(C)

From: RGVOPCEN
Sent: Tuesday, January 29, 2019 2:32 PM
To: (b)(6);(b)(7)(C)
Cc: RGVOPCEN
Subject: RG (b)(7)(E) ESR: Media Presence i (b)(7)(E) (Initial)

ALCON,

Please see below ESR (initial) regarding Media Interest reported by the (b)(7)(E), Texas Border Patrol Station.

Regards,

RGV OPCEN

From (b)(6);(b)(7)(C)
Sent: Tuesday, January 29, 2019 1:18 PM
To (b)(7)(E) ESR (b)(7)(E) (b)(7)(E)-TOC (b)(7)(E)
Subject: FW: RGV (b)(7)(E) ESR: Media Presence i (b)(7)(E) (Initial)
Importance: High

Evolving Situation Report

National Media Presence i (b)(7)(E)

January 29, 2019, 1230 hrs.

(b)(7)(E), Texas (Zon (b)(7)(E)

GPS Coordinates (b)(7)(E))

SIR: Pending

INITIAL

SITUATION:

On January 29, 2019, at approximately 1230 hrs., Agents assigned to Zon (b)(7)(E) near (b)(7)(E)

contacted the (b) (7)(E) Tactical Operations Center (b) (7)(E) TOC) concerning media presence in the area. Agents stated that Breitbart News Reporter Brandon Darby was actively recording during the apprehension of a group of aliens on (b) (7)(E) an (b) (7)(E)

From: (b)(6);(b)(7)(C)
Sent: Tuesday, January 29, 2019 3:31 PM
To: (b)(6);(b)(7)(C)
Subject: RG (b)(7)(E) ESR: Media Presence i (b)(7)(E) (FINAL)

Evolving Situation Report

National Media Presence i (b)(7)(E)

January 29, 2019, 1230 hrs.

(b)(7)(E), Texas (Zon (b)(7)(E)

GPS Coordinates (b)(7)(E))

SIR: (b)(7)(E)

FINAL

SITUATION:

On January 29, 2019, at approximately 1230 hrs., Agents assigned to Zon (b)(7)(E) near (b)(7)(E) contacted th (b)(7)(E) Tactical Operations Center (b)(7)(E)-TOC) concerning media presence in the area. Agents stated that Breitbart News Reporter Brandon Darby was actively recording during the apprehension of a group of aliens on (b)(7)(E) and (b)(7)(E). Mr. Darby stated that he was escorting a group of Congressional members but had intentionally not notified the Rio Grande Valley Sector Public Affairs Office. Mr. Darby also stated that he had authorization to be in the area from a gentlemen by the name o (b)(6)

FINAL

1330 hrs Media Interest Significant Incident Report (b)(7)(E) generated

1400 hrs

From: (b)(6);(b)(7)(C)
Sent: Tuesday, January 29, 2019 4:04 PM
To: (b)(6);(b)(7)(C)
Subject: RE: RG (b)(7)(E) ESR: Media Presence i (b)(7)(E) (Initial)

Who i (b)(6)

From (b)(6);(b)(7)(C)
Sent: Tuesday, January 29, 2019 1:26 PM
To: RGV-PA (b)(7)(E)
Cc (b)(7)(E) PAI (b)(7)(E) (b)(6);(b)(7)(C)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Subject: FW: RG (b)(7)(E) ESR: Media Presence i (b)(7)(E) (Initial)
Importance: High

Good afternoon RGV PAO personnel.

FYSA.



(b)(6);(b)(7)(C)
Special Operations Supervisor
(b)(7)(E) Border Patrol Station
Rio Grande Valley Sector
(b)(7)(E)
[REDACTED]
(b)(6);(b)(7)(C)

From (b)(6);(b)(7)(C) >
Sent: Tuesday, January 29, 2019 1:18 PM
To (b)(7)(E) ES (b)(7)(E) (b)(7)(E)-TO (b)(7)(E)
Subject: FW: RG (b)(7)(E) ESR: Media Presence i (b)(7)(E) (Initial)
Importance: High

Evolving Situation Report
National Media Presence i (b)(7)(E)
January 29, 2019, 1230 hrs.
(b)(7)(E) Texas (Zon (b)(7)(E)
GPS Coordinates (b)(7)(E)
SIR: Pending
INITIAL

SITUATION:

On January 29, 2019, at approximately 1230 hrs., Agents assigned to Zon ^{(b) (7)} near ^{(b) (7)(E)} contacted the ^{(b) (7)(E)} Tactical Operations Center ^{(b) (7)(E)}-TOC) concerning media presence in the area. Agents stated that Breitbart News Reporter Brandon Darby was actively recording during the apprehension of a group of aliens on ^{(b) (7)(E)} and ^{(b) (7)(E)}. Mr. Darby stated that he was escorting a group of Congressional members but had intentionally not notified the Rio Grande Valley Sector Public Affairs Office. Mr. Darby also stated that he had authorization to be in the area from a gentleman by the name of ^{(b) (6)}.

TIMELINE:

1230 hrs. Agents assigned to Zon ^{(b) (7)} near ^{(b) (7)(E)} contacted the ^{(b) (7)(E)} Tactical Operations Center ^{(b) (7)(E)}-TOC) concerning media presence in the area.
1232 hrs. SBP ^{(b) (6);(b) (7)(C)} responded to the area for further inquiry.
1240 hrs. Agents advised that Breitbart News Reporter Brandon Darby was actively recording and interviewing aliens apprehended near ^{(b) (7)(E)} and ^{(b) (7)(E)}.
1240 hrs The Rio Grande Valley Sector Public Affairs Office and the the Rio Grande Valley Sector Operations Center were notified.

Updates to follow

This ESR was reviewed and approved by W ^{(b) (6);(b) (7)(C)}

From: (b)(6);(b)(7)(C)
Sent: Tuesday, January 29, 2019 4:40 PM
To: (b)(7)(E) ESR (b)(7)(E) TOC
Subject: RG (b)(7)(E) ESR: Media Presence (b)(7)(E) (FINAL)

Evolving Situation Report

National Media Presence i (b)(7)(E)

January 29, 2019, 1230 hrs.

(b)(7)(E), Texas (Zon (b)(7)(E)

GPS Coordinates: (b)(7)(E))

SIR: (b)(7)(E)

FINAL

SITUATION:

On January 29, 2019, at approximately 1230 hrs., Agents assigned to Zone (b)(7)(E) near (b)(7)(E) contacted th (b)(7)(E) Tactical Operations Center (b)(7)(E)-TOC) concerning media presence in the area. Agents stated that Breitbart News Reporter Brandon Darby was actively recording during the apprehension of a group of aliens on (b)(7)(E) and (b)(7)(E). Mr. Darby stated that he was escorting a group of Congressional members but had intentionally not notified the Rio Grande Valley Sector Public Affairs Office. Mr. Darby also stated that he had authorization to be in the area from a gentlemen by the name o (b)(6)

FINAL

1330 hrs Media Interest Significant Incident Report (b)(7)(E) generated

1400

From: (b)(6);(b)(7)(C) on behalf of RGVOPCEN
Sent: Tuesday, January 29, 2019 4:55 PM
To: (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
Cc: (b)(6);(b)(7)(C)
Subject: RG (b)(7)(E) ESR: Media Presence i (b)(7)(E) (FINAL)

ALCON,

Below is an ESR (final) regarding a National Media Presence reported by th (b)(7)(E), Texas Border Patrol Station.

Regards,

RGV OPCEN

Evolving Situation Report
National Media Presence i (b)(7)(E)
January 29, 2019, 1230 hrs.
(b)(7)(E) Texas (Zon (b)(7)(E)
GPS Coordinates (b)(7)(E)
SIR: (b)(7)(E)
FINAL

SITUATION:

On January 29, 2019, at approximately 1230 hrs., Agents assigned to Zon (b)(7)(E) near (b)(7)(E) contacted the (b)(7)(E) Tactical Operations Center (b)(7)(E)-TOC) concerning media presence in the area. Agents stated that Breitbart News Reporter Brandon Darby was actively recording during the apprehension of a group of aliens on (b)(7)(E) an (b)(7)(E). Mr. Darby stated that he was escorting a group of Congressional members but had intentionally not notified the Rio Grande Valley Sector Public Affairs Office. Mr. Darby also stated that he had authorization to be in the area from a gentlemen by the name o (b)(6).

FINAL

1330 hrs Media Interest Significant Incident Report (b)(7)(E) generated
1400 hrs Media Outlet left the area without further incident.

TIMELINE:

1230 hrs. Agents assigned to Zon (b)(7)(E) near (b)(7)(E) contacted th (b)(7)(E) Tactical Operations Center (b)(7)(E)-TOC) concerning media presence in the area.
1232 hrs. SBP (b)(6);(b)(7)(C) responded to the area for further inquiry.
1240 hrs. Agents advised that Breitbart News Reporter Brandon Darby was actively recording and interviewing aliens apprehended near (b)(7)(E) an (b)(7)(E).

1240 hrs The Rio Grande Valley Sector Public Affairs Office and the the Rio Grande Valley Sector Operations Center were notified.

1330 hrs Media Interest Significant Incident Repo (b) (7)(E) generated

1400 hrs Media Outlet cleared the area without further incident.

No further updates anticipated

This ESR was reviewed and approved by W (b)(6);(b)(7)(C)

From:

RGVOPCEN

Sent:

Tuesday, January 29, 2019 4:55 PM

To:

(b)(6);(b)(7)(C)

Cc:

Subject:

RG (b)(7)(E) ESR: Media Presence i (b)(7)(E) (FINAL)

ALCON,

Below is an ESR (final) regarding a National Media Presence reported by th (b)(7)(E), Texas Border Patrol Station.

Regards,

RGV OPCEN

Evolving Situation Report

National Media Presence i (b)(7)(E)

January 29, 2019, 1230 hrs.

(b)(7)(E), Texas (Zon (b)(7)(E)

GPS Coordinates (b)(7)(E)

SIR: (b)(7)(E)

FINAL

SITUATION:

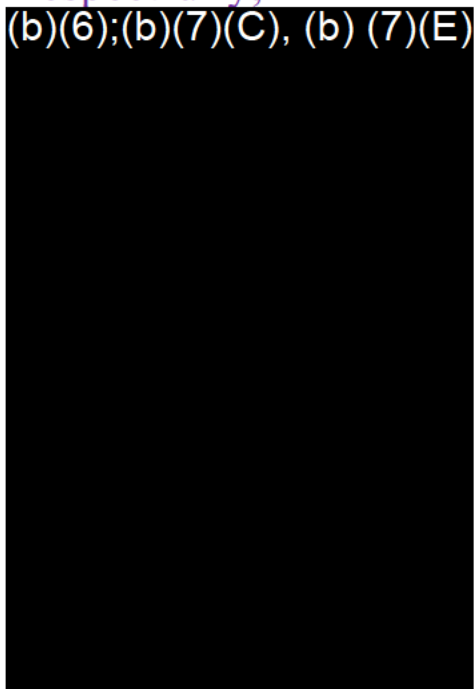
On January 29, 2019, at approximately 1230 hrs., Agents assigned to Zon (b)(7)(E) near (b)(7)(E) contacted th (b)(7)(E) Tactical Operations Center (b)(7)(E) TOC) concerning media presence in the area. Agents stated that Breitbart News Reporter Brandon Darby was actively recording during the apprehension of a group of aliens on (b)(7)(E) and (b)(7)(E). Mr. Darby stated that he was escorting a group of Congressional members but had intentionally not notified the Rio Grande Valley Sector Public Affairs Office. Mr. Darby also stated that he had authorization to be in the area f

From: (b)(6);(b)(7)(C)
Sent: Thursday, January 31, 2019 10:19 AM
To: (b)(6);(b)(7)(C)
Subject: FW: (U//LES) CASE SUPPORT (b)(7)(E) FYSA - Militia Activity

Fro (b)(6);(b)(7)(C)
Sent: Thursday, January 31, 2019 9:07 AM
To (b)(6);(b)(7)(C)
Cc
Subject: (U//LES) CASE SUPPORT (b)(7)(E) FYSA - Militia Activity

Respectfully,

(b)(6);(b)(7)(C), (b)(7)(E)



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From (b)(6)
Sent: Thursday, January 31, 2019 9:04 AM
To (b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

C

(b) (6)

Subject: LES CASE SUPPORT (b) (7)(E) FYSA - Militia Activity

Situational Awareness Only

(b) (7)(E), (b)(6);(b)(7)(C)

(b)(6);(b)(7)(C), (b) (7)(E)

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GPS Coordinates (b) (7)(E)

SIR: (b) (7)(E)

FINAL

SITUATION:

On January 29, 2019, at approximately 1230 hrs., Agents assigned to Zon (b) (7)(E) near (b) (7)(E) contacted the (b) (7)(E) Tactical Operations Center (b) (7)(E) TOC) concerning media presence in the area. Agents stated that Breitbart News Reporter Brandon Darby was actively recording during the apprehension of a group of aliens on (b) (7)(E) and (b) (7)(E). Mr. Darby stated that he was escorting a group of Congressional members but had intentionally not notified the Rio Grande Valley Sector Public Affairs Office. Mr. Darby also stated that he had authorization to be in the area from a gentlemen by the name of (b) (6).

FINAL

1330 hrs Media Interest Significant Incident Report (b) (7)(E) generated

1400 hrs Media Outlet left the area without further incident.

TIMELINE:

1230 hrs. Agents assigned to Zon (b) (7)(E) near (b) (7)(E) contacted the (b) (7)(E) Tactical Operations Center (b) (7)(E)-TOC) concerning media presence in the area.

1232 hrs. SBP (b) (6);(b) (7)(C) responded to the area for further inquiry.

1240 hrs. Agents advised that Breitbart News Reporter Brandon Darby was actively recording and interviewing aliens apprehended near (b) (7)(E) and (b) (7)(E).

1240 hrs The Rio Grande Valley Sector Public Affairs Office and the the Rio Grande Valley Sector Operations Center were notified.

1330 hrs Media Interest Significant Incident Report (b) (7)(E) generated

1400 hrs Media Outlet cleared the area without further incident.

No further updates anticipated

This ESR was reviewed and approved by W (b) (6);(b) (7)(C)

From: (b)(6);(b)(7)(C)
Sent: Thursday, January 31, 2019 10:46 AM
To: (b)(6);(b)(7)(C)
Subject: FW: (U//LES) CASE SUPPORT (b)(7)(E) FYSA - Militia Activity

(b) (7)(E)

From (b)(6);(b)(7)(C)
Sent: Thursday, January 31, 2019 9:07 AM
To (b)(6);(b)(7)(C)
Cc (b)(6);(b)(7)(C)
Subject: (U//LES) CASE SUPPORT (b)(7)(E) FYSA - Militia Activity

Respectfully,

(b)(6);(b)(7)(C), (b) (7)(E)

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Fro (b)(6);(b)(7)(C)
Sent: Thursday, January 31, 2019 9:04 AM
To (b)(6);(b)(7)(C),

(b)(6);(b)(7)(C)

Cc

(b)(6);(b)(7)(C)

>

Subject: LES CASE SUPPORT (b) (7)(E) FYSA - Militia Activity

Situational Awareness Only

(b)(6);(b)(7)(C), (b) (7)(E)

(b)(6);(b)(7)(C), (b) (7)(E)

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intended recipient. DESTROY all copies of the original and contact the sender by reply e-mail or by calling th (b)(6);(b)(7)(C)

Sent: Wednesday, June 5, 2019 1:08 PM
To: (b)(6);(b)(7)(C)
Subject: Memo for record

(b) (5), (b) (6), (b) (7)(C)

From (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
Sent: Thursday, May 30, 2019 8:54 AM
To (b)(6);(b)(7)(C)
Subject: RE: LINE TOUR REQUEST

Thank (b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

Office: (b)(6);(b)(7)(C)
Cellular: (b)(6);(b)(7)(C)
HSDN (SIPR) (b)(6);(b)(7)(C)
Address: 8901 Montana Ave, El Paso, TX 79925

From (b)(6);(b)(7)(C)
Sent: Thursday, May 30, 2019 8:53 AM
To (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
Subject: RE: LINE TOUR REQUEST

Sir,

I'll get back to you by noon. About to walk into a meeting.

Thanks,

(b)(6);(b)(7)(C)

From (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
Sent: Thursday, May 30, 2019 8:43 AM
To (b)(6);(b)(7)(C)
Cc (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
Subject: FW: LINE TOUR REQUEST
Importance: High

(b)(6);(b)(7)(C),

(b) (5)

). Thanks.

Dave

Office: (b)(6);(b)(7)(C)
Cellular: (b)(6);(b)(7)(C)
HSDN (SIPR) (b)(6);(b)(7)(C)
Address: 8901 Montana Ave, El Paso, TX 79925

From (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
Sent: Wednesday, May 29, 2019 7:19 PM
To (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
Cc (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
Subject: Fwd: LINE TOUR REQUEST

(b)(6);(b)(7)(C),

Please see the below ride along request for David Clark for tomorrow for your review and approval.

He will be in town for the Santa Teresa new wall event tomorrow and is asking for a ride along after the event.

Your thoughts?

(b)(6);(b)(7)(C)
Assistant Chief Patrol Agent
Strategic Communications
U.S. Border Patrol - El Paso Sector
8901 Montana Ave.
El Paso, TX 79925
(b)(6);(b)(7)(C) - Office
(b)(6);(b)(7)(C) - Cell
(b)(6);(b)(7)(C)

Begin forwarded message:

From: (b)(6);(b)(7)(C)
Date: May 29, 2019 at 6:42:37 PM MDT
To: (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
Cc: (b)(6);(b)(7)(C)
Subject: LINE TOUR REQUEST

Good afternoon Sir,

STN received a phone call requesting information on how to set up a line tour for Sheriff David Clarke. The caller was (b) (6) who is currently the head of security for the "We Build the Wall" project at monument one. His number is (b) (6)

Sheriff Clarke is scheduled to be in the El Paso area for the next couple of days attending several events. Sheriff Clarke requested a line tour to see the realities faced by agents on a daily basis. Sheriff Clarke has several events scheduled throughout the day and requested the line tour (if possible) be scheduled during the evening hours. I've provided (b) (6) your contact information and he will call you shortly with specifics regarding the request.

Below is a quick Wikipedia biography on Sheriff Clarke

David Alexander Clarke Jr. is an American former law enforcement official who served as Sheriff of Milwaukee County, Wisconsin from 2002 to 2017. In 2002, Clarke was appointed to the position by Governor Scott McCallum and later elected that same year to his first four-year term. He was reelected in November 2006, 2010 and 2014.^[1] Although registered and elected as a Democrat in a heavily Democratic county, many of Clarke's political views align with those of conservative Republicans.

He resigned as sheriff in August 2017.^[4] A vocal supporter of President Donald Trump, Clarke was considered for a role in the Trump Administration. After resigning as Sheriff of Milwaukee County, Clarke joined the super PAC America First Action as a spokesman and senior advisor, serving until February 2019.

Clarke was born in Milwaukee, one of five children of Jeri and David Clarke Sr. His father was a paratrooper with the 2nd Ranger Infantry Company. Clarke Jr. attended Marquette University High School where he played for the varsity basketball team. After finishing high school, Clarke took classes at the University of Wisconsin in Milwaukee but dropped out during his first year when he got a job driving beer trucks.

His career in law enforcement began in 1978 at the Milwaukee Police Department (MPD). He "rose through the ranks at a slow but steady pace in his 24 years with the department." Clarke was a patrol officer for eleven years and then a homicide detective; he was promoted to lieutenant of detectives in 1993 and captain in 1999.

In 1999, Clarke received a B.A. in Management of Criminal Justice from Concordia University Wisconsin's School of Adult and Continuing Education. In January 2002, Milwaukee County Sheriff Leverett F. (Lev) Baldwin resigned midway through his term to take a pension payout. Clarke was one of ten applicants for the position, and Governor Scott McCallum appointed him on March 19, 2002. He was elected to a full term later in 2002, and was reelected in 2006, 2010, and 2014.



(b)(6);(b)(7)(C)

Watch Commander
Santa Teresa Border Patrol Station
El Paso Sector

Ofc (b)(6);(b)(7)(C)

Cell: (b)(6);(b)(7)(C)

From: (b)(6);(b)(7)(C)
Sent: Wednesday, June 5, 2019 1:10 PM
To: (b)(6);(b)(7)(C)
Subject: Memo for record

(b) (5), (b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)
Attorney
Office of the Assistant Chief Counsel
U.S. Customs and Border Protection
9434 Viscount Blvd.
El Paso, Texas 79925
(b)(6);(b)(7)(C) (main line)
(b)(6);(b)(7)(C) (direct line)

From (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
Sent: Thursday, May 30, 2019 8:54 AM
To (b)(6);(b)(7)(C)
Subject: RE: LINE TOUR REQUEST

Thank (b)(6);(b)(7)(C).

(b)(6);(b)(7)(C)

Office: (b)(6);(b)(7)(C)
Cellular: (b)(6);(b)(7)(C)
HSDN (SIPR) (b)(6);(b)(7)(C)
Address: 8901 Montana Ave, El Paso, TX 79925

From (b)(6);(b)(7)(C)
Sent: Thursday, May 30, 2019 8:53 AM
To (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
Subject: RE: LINE TOUR REQUEST

Sir,

I'll get back to you by noon. About to walk into a meeting.

Thanks,

(b)(6);(b)(7)(C)

From (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
Sent: Thursday, May 30, 2019 8:43 AM
To (b)(6);(b)(7)(C)
Cc (b)(6);(b)(7)(C)
Subject: FW: LINE TOUR REQUEST
Importance: High

(b)(6);(b)(7)(C)

(b) (5)

Thanks.

(b)(6);(b)(7)(C)

Office: (b)(6);(b)(7)(C)
Cellular: (b)(6);(b)(7)(C)
HSDN (SIPR) (b)(6);(b)(7)(C)
Address: 8901 Montana Ave, El Paso, TX 79925

From (b)(6);(b)(7)(C)
Sent: Wednesday, May 29, 2019 7:19 PM
To (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
Cc (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
Subject: Fwd: LINE TOUR REQUEST

(b)(6);(b)(7)(C),

Please see the below ride along request for David Clark for tomorrow for your review and approval.

He will be in town for the Santa Teresa new wall event tomorrow and is asking for a ride along after the event.

Your thoughts?

(b)(6);(b)(7)(C)
Assistant Chief Patrol Agent
Strategic Communications
U.S. Border Patrol - El Paso Sector
8901 Montana Ave.

El Paso, TX 79925

(b)(6);(b)(7)(C) - Office

(b)(6);(b)(7)(C) - Cell

(b)(6);(b)(7)(C)

Begin forwarded message:

From: (b)(6);(b)(7)(C)
Date: May 29, 2019 at 6:42:37 PM MDT
To: (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
Cc: (b)(6);(b)(7)(C)
Subject: LINE TOUR REQUEST

Good afternoon Sir,

STN received a phone call requesting information on how to set up a line tour for Sheriff David Clarke. The caller was (b)(6) who is currently the head of security for the "We Build the Wall" project at monument one. His number is (b)(6)

Sheriff Clarke is scheduled to be in the El Paso area for the next couple of days attending several events. Sheriff Clarke requested a line tour to see the realities faced by agents on a daily basis. Sheriff Clarke has several events scheduled throughout the day and requested the line tour (if possible) be scheduled during the evening hours. I've provided (b)(6) your contact information and he will call you shortly with specifics regarding the request.

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He resigned as sheriff in August 2017.^[4] A vocal supporter of President Donald Trump, Clarke was considered for a role in the Trump Administration. After resigning as Sheriff of Milwaukee County, Clarke joined the super PAC America First Action as a spokesman and senior advisor, serving until February 2019.

Clarke was born in Milwaukee, one of five children of Jeri and David Clarke Sr. His father was a paratrooper with the 2nd Ranger Infantry Company. Clarke Jr. attended Marquette University High School where he played for the varsity basketball team. After finishing high school, Clarke took classes at the University of Wisconsin in Milwaukee but dropped out during his first year when he got a job driving beer trucks.

His career in law enforcement began in 1978 at the Milwaukee Police Department (MPD). He "rose through the ranks at a slow but steady pace in his 24 years with the department." Clarke was a patrol officer for eleven years and then a homicide detective; he was promoted to lieutenant of detectives in 1993 and captain in 1999.

In 1999, Clarke received a B.A. in Management of Criminal Justice from Concordia University Wisconsin's School of Adult and Continuing Education. In January 2002, Milwaukee County Sheriff Leverett F. (Lev) Baldwin resigned midway through his term to take a pension payout. Clarke was one of ten applicants for the position, and Governor Scott McCallum appointed him on March 19, 2002. He was elected to a full term later in 2002, and was reelected in 2006, 2010, and 2014.



(b)(6);(b)(7)(C)

Watch Commander

Santa Teresa Border Patrol Station

El Paso Sector

Ofc (b)(6);(b)(7)(C)

Cell: (b)(6);(b)(7)(C)

From: (b)(6);(b)(7)(C)
Sent: Thursday, January 31, 2019 11:38 AM
To: (b)(6);(b)(7)(C)
Subject: FW: LES CASE SUPPORT (b) (7)(E) FYSA - Militia Activity

From (b)(6);(b)(7)(C)
Sent: Thursday, January 31, 2019 9:04 AM
To (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
Cc (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
Subject: LES CASE SUPPORT (b) (7)(E) FYSA - Militia Activity

Situational Awareness Only

(b) (7)(E)

(b)(6);(b)(7)(C), (b) (7)(E)

From: (b)(6);(b)(7)(C)
Sent: Thursday, January 31, 2019 1:40 PM
To: (b)(6);(b)(7)(C)
Subject: RE: Texas Minutemen Meeting

Thank (b)(6);(b)(7)(C) – see ya on the line

Thank You Respectfully,

(b)(6);(b)(7)(C)

(A) Division Chief
Law Enforcement Operations Division
Big Bend Sector

(O (b)(6);(b)(7)(C)
(C (b)(6);(b)(7)(C)

From (b)(6);(b)(7)(C)
Sent: Thursday, January 31, 2019 12:22 PM
To (b)(6);(b)(7)(C)
Subject: RE: Texas Minutemen Meeting

He did not come or at least has not come by the station. The Sheriff is out of town, but was going to have a Deputy provide a ride along. If I get any feedback, I'll pass it along.

(b)(6);(b)(7)(C)

From (b)(6);(b)(7)(C)
Sent: Thursday, January 31, 2019 12:21 PM
To (b)(6);(b)(7)(C)
Subject: RE: Texas Minutemen Meeting

(b)(6);(b)(7)(C)

How did Sheriff Clarke's visit go? Anything of interest?

Thank You Respectfully,

(b)(6);(b)(7)(C)

(A) Division Chief

Law Enforcement Operations Division
Big Bend Sector

(O (b)(6);(b)(7)(C)
(C [REDACTED]

From [REDACTED] (b)(6);(b)(7)(C)

Sent: Wednesday, January 30, 2019 8:57 AM

To [REDACTED] (b)(6);(b)(7)(C)

Cc [REDACTED] (b)(6);(b)(7)(C)

[REDACTED] >
Subject: RE: Texas Minutemen Meeting

(b)(6);(b)(7)(C)

Good morning. I just spoke with [REDACTED] (b) (6). He stated that former Sheriff Clarke is flying into Midland today and they would like to know if Border Patrol will provide him with a tour. I let him know I had not heard back from my request last week and that I was sending it up the chain again.

The question came up with regards to their map request as well. I hadn't heard anything back, so I informed them we couldn't provide maps as they are for LEO use.

Thank you.

(b)(6);(b)(7)(C)

From [REDACTED] (b)(6);(b)(7)(C)

Sent: Wednesday, January 30, 2019 5:51 AM

To [REDACTED] (b)(6);(b)(7)(C)

Cc [REDACTED] (b)(6);(b)(7)(C)

[REDACTED] >
Subject: RE: Texas Minutemen Meeting

(b)(6);(b)(7)(C),

Good morning. I had a message left for me regarding a phone call for [REDACTED] (b) (6) of the Texas Minutemen. It was regarding the ride along request for David Clarke. Is this something Border Patrol will entertain? I plan to call (b) (6) [REDACTED] back this morning and wanted to provide him with information. The request was originally for yesterday, other than that, I do not have any more specifics at this time.

Thank you.

(b)(6);(b)(7)(C)

From [REDACTED] (b)(6);(b)(7)(C)

Sent: Friday, January 25, 2019 4:22 PM

To [REDACTED] (b)(6);(b)(7)(C)

Cc [REDACTED] (b)(6);(b)(7)(C)

[REDACTED]
[REDACTED] >
Subject: RE: Texas Minutemen Meeting

(b)(6);(b)(7)(C)

Good afternoon. (b)(6);(b)(7) and I just finished up a visit from (b)(6) founder of the Texas Minutemen, and another gentlemen by the name (b)(6). (b)(6) is a volunteer that came in from Florida.

At this time they only have permission to be on the land owned by (b)(6), which is approximately 185 acres. They did confirm that David A. Clarke is attempting to make it to the area next Tuesday and may be flying into Midland. (b)(6) stated they plan to have Sheriff Hughes provide a tour for Mr. Clarke, but also asked if Border Patrol could provide a tour. I informed them I would route that through our chain of command. In addition to Mr. Clarke (b)(6) stated they are making contact with other people that support their cause and bring as much attention to the area as they can.

The entire conversation was good.

Thank you.

(b)(6);(b)(7)

From (b)(6);(b)(7)(C)

Sent: Friday, January 25, 2019 2:55 PM

To (b)(6);(b)(7)(C)

Cc (b)(6);(b)(7)(C)

Subject: Re: Texas Minutemen Meeting

(b)(6);(b)(7)

Thank You. Please ensure the rules of engagement are reiterated at musters. Also, notify us of any contact or issues.

Thank You Respectfully,

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

(A) Division Chief

Law Enforcement Operations Division

Big Bend Sector

(b)(6);(b)(7)(C)

(C)

Sent from my iPhone

On Jan 25, 2019, at 12:54 PM (b)(6);(b)(7)(C) wrote:

(b)(6);(b)(7)(C)

Good afternoon. I received a call from (b)(6) the Terrell County landowner that will be allowing the Texas Minutemen to patrol his property. He informed me there are currently three members of the Texas Minutemen at his ranch and that they are anticipating approximately 10 more in a week or so. (b)(6) also informed me that former Milwaukee county Sheriff, David A. Clarke will be in the area next week to meet with him as well as the Sheriff. (b)(6) asked if we could provide him with maps of the area to provide to the Minutemen. I told him we didn't generate those here and I would

have to send the request up the chain, but I didn't believe it would be possible. (b) (6) and the Texas Militia also plan to start a GoFundMe page asking for support for fuel and what not.

Thank you.

(b)(6);(b)(7)(C)

From (b)(6);(b)(7)(C)
Sent: Wednesday, December 12, 2018 2:47 PM
To (b)(6);(b)(7)(C)
Cc (b)(6);(b)(7)(C)
Subject: FW: Texas Minutemen Meeting

(b)(6);(b)(7)(C)

Good afternoon. Below is what I sent t (b)(6);(b)(7)(C) regarding the meeting. Will this work or do you want me to put it in another format?

Thank you.

(b)(6);(b)(7)(C)

From (b)(6);(b)(7)(C)
Sent: Friday, December 7, 2018 1:49 PM
To: (b)(6);(b)(7)(C)
>
Subject: Texas Minutemen Meeting

(b)(6);(b)(7)(C)

Good afternoon. This morning at approximately 10:45 A.M., Terrell County landowne (b) (6) and Texas Minutemen founde (b) (6) stopped by the station. (b) (6) property is located o (b) (7)(E), (b) (6) approximatel (b) (7)(E), (b) (6) and an additiona (b) (7)(E), (b) (6) The portion (b) (7)(E), (b) (6) leading up t (b) (6) property is considered a county road. Additionally, the entrance t (b) (6) property has a sign title (b) (7)(E), (b) (6)

(b) (6) informed me that he contacte (b) (6) due to recently viewing an illegal alien alon (b) (6) and a subsequent event when he had a satellite phone stolen, which he attributed to an illegal alien (b) (6) mentioned that he was once a Marshall in Wise County, Texas, and that he was also a Vietnam Veteran. Whe (b) (6) mentioned that he was from Wise County (b) (6) seemed surprised and mentioned that he lives in Wise County. This demonstrated to me they were not very familiar with one another.

(b) (6) introduced himself and spoke of his past border activities in Arizona, New Mexico and Texas (b) (6) informed me he had approximately 20 individuals interested in coming to Terrell County and they planned to be here the second week in January. Additionally (b) (6) stated that he will vet all volunteers in order to keep the "Rambos" out.

I informed both gentlemen the best thing they can do is be our eyes and ears when they are out and the importance of communication with us if they encountered anyone as well as for officer safety. I explained the liabilities they could face when interacting with anyone they encounter. I also encouraged them to allow us to execute any law enforcement action. Both gentlemen acknowledged that they understood an (b) (6) stated that they will be in static positions and would advise of

any activity. Before leaving I asked that they contact me before they return to the area, which they agreed to do.

Both men were cordial and respectful.

(b) (6) were planning to visit the Sheriff after leaving my office.

I will be provide the above information to the Sheriff Hughes as well as local TPWD Game Wardens and DPS Troopers.

Thank you.

(b)(6);(b)(7)(C)

(b) (6), (b) (7)(C)
United States Border Patrol

(b) (6), (b) (7)(C)
Sanderson, Texas

Office (b) (6), (b) (7)(C)

(b)(6);(b)(7)(C)

From: (b)(6);(b)(7)(C)
Sent: Thursday, January 31, 2019 2:55 PM
To: (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
Subject: RE: Texas Minutemen Meeting

(b) (7)(E), (b) (5)

(b)(6);(b)(7)(C)
(b) (6), (b) (7)(C)
Big Bend Sector
United States Border Patrol
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)

From (b)(6);(b)(7)(C) >
Sent: Thursday, January 31, 2019 1:52 PM
To (b)(6);(b)(7)(C)
Subject: RE: Texas Minutemen Meeting

Yes Sir, I agree.

(b) (5)

Thank you.

(b)(6);(b)(7)(C)

From (b)(6);(b)(7)(C)
Sent: Thursday, January 31, 2019 1:48 PM
To (b)(6);(b)(7)(C)
Subject: RE: Texas Minutemen Meeting

Thanks for the AAR (b) (5)

(b)(6);(b)(7)(C)
(b) (6), (b) (7)(C)
Big Bend Sector
United States Border Patrol
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)

From (b)(6);(b)(7)(C)
Sent: Thursday, January 31, 2019 12:40 PM
To (b)(6);(b)(7)(C)
Subject: FW: Texas Minutemen Meeting

Chief

Former Sheriff Clarke did not have any contact with the Sanderson Station.

Thank You Respectfully,

(b)(6);(b)(7)(C)

(A) Division Chief
Law Enforcement Operations Division
Big Bend Sector

(O (b)(6);(b)(7)(C)
(C

From (b)(6);(b)(7)(C)

Sent: Thursday, January 31, 2019 12:22 PM

To (b)(6);(b)(7)(C)

Subject: RE: Texas Minutemen Meeting

He did not come or at least has not come by the station. The Sheriff is out of town, but was going to have a Deputy provide a ride along. If I get any feedback, I'll pass it along.

(b)(6);(b)(7)(C)

From (b)(6);(b)(7)(C) >

Sent: Thursday, January 31, 2019 12:21 PM

To (b)(6);(b)(7)(C)

Subject: RE: Texas Minutemen Meeting

(b)(6);(b)(7)(C)

How did Sheriff Clarke's visit go? Anything of interest?

Thank You Respectfully,

(b)(6);(b)(7)(C)

(A) Division Chief
Law Enforcement Operations Division
Big Bend Sector

(O (b)(6);(b)(7)(C)
(C

From (b)(6);(b)(7)(C)

Sent: Wednesday, January 30, 2019 8:57 AM

To (b)(6);(b)(7)(C)

Cc (b)(6);(b)(7)(C)

Subject: RE: Texas Minutemen Meeting

(b)(6);(b)(7)(C)

Good morning. I just spoke with (b)(6). He stated that former Sheriff Clarke is flying into Midland today and they would like to know if Border Patrol will provide him with a tour. I let him know I had not heard back from my request last week and that I was sending it up the chain again.

The question came up with regards to their map request as well. I hadn't heard anything back, so I informed them we couldn't provide maps as they are for LEO use.

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Sent: Wednesday, January 30, 2019 5:51 AM

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Cc (b)(6);(b)(7)(C)

Subject: RE: Texas Minutemen Meeting

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Good afternoon (b)(6);(b)(7)(C) and I just finished up a visit from (b)(6) founder of the Texas Minutemen, and another gentleman by the name (b)(6) is a volunteer that came in from Florida.

At this time they only have permission to be on the land owned by (b)(6) which is approximately 185 acres. They did confirm that David A. Clarke is attempting to make it to the area next Tuesday and may be flying into Midland (b)(6)

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The entire conversation was good.

Thank you.

(b) (6); (b) (7) (C)

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(b) (6); (b) (7) (C)

(b)(6);(b)(7)(C)

(A) Division Chief

Law Enforcement Operations Division

Big Bend Sector

(O (b)(6);(b)(7)(C)

(C

Sent from my iPhone

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(b) (6); (b) (7) (C)

From (b)(6);(b)(7)(C)
Sent: Wednesday, December 12, 2018 2:47 PM
To (b)(6);(b)(7)(C)
Cc (b)(6);(b)(7)(C)
Subject: FW: Texas Minutemen Meeting

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From (b)(6);(b)(7)(C)
Sent: Friday, December 7, 2018 1:49 PM
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Cc (b)(6);(b)(7)(C)
Subject: Texas Minutemen Meeting

(b)(6);(b)(7)(C)

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(b)(6) informed me that he contacte (b)(6) due to recently viewing an illegal alien alon (b)(6) and a subsequent event when he had a satellite phone stolen, which he attributed to an illegal alien (b)(6) mentioned that he was once a Marshall in Wise County, Texas, and that he was also a Vietnam Veteran. Whe (b)(6) mentioned that he was from Wise County (b)(6) seemed surprised and mentioned that he lives in Wise County. This demonstrated to me they were not very familiar with one another.

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(b)(6);(b)(7)(C)

(b) (6), (b) (7)(C)
United States Border Patrol
(b) (6), (b) (7)(C)
Sanderson, Texas
Office (b) (6), (b) (7)(C)
(b)(6);(b)(7)(C)

From: (b)(6);(b)(7)(C)
Sent: Thursday, January 31, 2019 2:58 PM
To: (b)(6);(b)(7)(C)
Subject: RE: LES CASE SUPPORT - (b)(7)(E) FYSA - Militia Activity

You're welcome

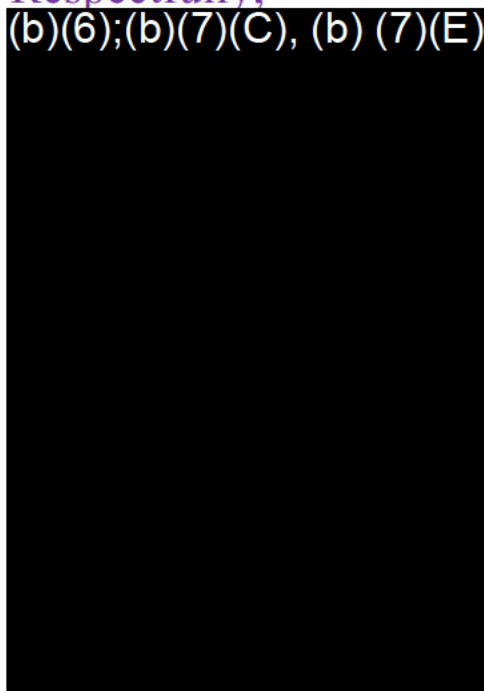
From: (b)(6);(b)(7)(C)
Sent: Thursday, January 31, 2019 9:08 AM
To: (b)(6);(b)(7)(C)
Subject: RE: LES CASE SUPPORT (b)(7)(E) FYSA - Militia Activity

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If you believe this to be a malicious and/or phishing email, please send this email as an attachment to (b)(7)(E)

Thank you for sharing with us.

Respectfully,

(b)(6);(b)(7)(C), (b)(7)(E)



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From [REDACTED] (b)(6);(b)(7)(C)

Sent: Thursday, January 31, 2019 9:04 AM

To [REDACTED] (b)(6);(b)(7)(C)

[REDACTED]

[REDACTED]

Cc [REDACTED] (b)(6);(b)(7)(C)

[REDACTED]

Subject: LES CASE SUPPORT [REDACTED] (b)(7)(E) FYSA - Militia Activity

Situational Awareness Only

(b)(6);(b)(7)(C), (b) (7)(E)

(b)(6);(b)(7)(C), (b) (7)(E)

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From: Brian Kolfage - WeBuildTheWall, Inc. <info@webuildthewall.us>
Sent: Thursday, January 31, 2019 5:51 PM
To: (b)(6);(b)(7)(C)
Subject: GoFundMe told me you still need to take action to have your contribution count

Dear original donor to our GoFundMe Campaign to build the wall,

GoFundMe just told me that they still haven't heard from you whether or not you still want to support our project to build the wall. Your contribution will be automatically refunded unless you use the email address you're receiving this email from to tell GoFundMe that you want to OPT-IN by clicking on [***THIS LINK***](#)

Our team just wrapped up our first visit to the border and I can tell you that we're going to start building segments of wall very soon. We've assembled an incredible team that includes people like General Spalding, John Moran, Eric Prince, Tom Tancredo, Sheriff David Clarke, angel Mom Mary Ann Mendoza, and Kris Kobach. Today we just announced two more incredible additions by adding Breitbart's Border and Cartel Chronicles Director Brandon Darby and Baseball Legend Curt Schilling!

We hope that you are seeing all the progress our team is making and choose to have your generous contribution support this historic project.

We are working hard to EARN YOUR SUPPORT!

To make sure your contribution counts please check the email address you received this email on and enter it into GoFundMe's OPT-IN form that you can find on the link below:

[Click HERE to tell GoFundMe that you still want to build the wall!](#)

If you have any questions, you can email us at info@webuildthewall.us and we will do our best to answer those for you.

Thank you and God Bless,
Brian Kolfage
President, WeBuildTheWall



WeBuildTheWall, Inc. | PO Box 131567, Houston, TX 77219-1567

[Unsubscribe](#) (b)(6);(b)(7)(C)

[Update Profile](#) | [About our service provider](#)

Sent by info@webuildthewall.us in collaboration with



From: (b) (6)
Sent: Thursday, July 25, 2019 12:10 PM
To: (b) (6), (b) (7)(C)
Subject: Fwd: Complimentary Reception Invitation from the El Paso County Republican Party - THIS THURSDAY

Sent from my iPhone

Begin forwarded message:

From: (b) (6)
Date: July 22, 2019 at 10:39:00 AM MDT
Subject: Fwd: Complimentary Reception Invitation from the El Paso County Republican Party - THIS THURSDAY

Sent from my iPhone

Begin forwarded message:

From: El Paso County Republican Party <elpasogophq@gmail.com>
Date: July 21, 2019 at 6:17:49 PM MDT
To: (b) (6)
Subject: Complimentary Reception Invitation from the El Paso County Republican Party - THIS THURSDAY
Reply-To: <elpasogophq@gmail.com>

Your El Paso County Republican Party invites you to attend this reception as our guests to show a big El Paso welcome to the national headliners and speakers:

SYMPOSIUM AT THE WALL

Thursday, July 25, 2019

6:00PM - 9:30PM

1000 Brickland Rd., Sunland Park, NM

(Site of the newly constructed border wall - WE BUILD THE WALL)*

SEE BULLETS BELOW*



Come meet, shake hands, have a glass of wine, take selfies, and talk with the likes of
:

Stephen K. Bannon, Citizens of the American Republic

Brian Kolfage, We Build the Wall

Kris Kobach, We Build the Wall

Candace Owens, Turning Point, Conservative Activist

Sheriff David Clarke, Former Sheriff, Milwaukee, WI

Congressman Louis Gohmert (R TX)

And more !

[SUBMIT REGISTRATION BY CLICKING HERE!!!](#)

***NOTE YOU ARE ATTENDING BY INVITATION OF THE EL PASO COUNTY REPUBLICAN
PARTY.***

You will receive prompt **email confirmation**.

- ***Symposium's temporary shelter incorporates full bathroom facilities, artificial turf and Refrigerated Air.**
- **Complementary meals served daily between symposium seminar sessions.**
- **Symposium program updates will follow by email**
- **El Paso County Republican Party – Symposium Hotline: (915) 400-4653**
Directions and site map are on Registration form.

[GET MORE DETAILED INFORMATION BY CLICKING HERE!](#)



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Suite 220
El Paso, TX 79912

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From: (b)(6);(b)(7)(C)
Sent: Thursday, July 25, 2019 1:08 PM
To: (b)(6);(b)(7)(C)
Cc: BORDERWALLTASK (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
Subject: RE: DRAFT: Border Wall Weekly (22-26 July)

Added additional media info re: wall symposium! See below!

From (b)(6);(b)(7)(C) .
Sent: Thursday, July 25, 2019 12:32 PM
To (b)(6);(b)(7)(C)
Cc: BORDERWALLTASKS (b)(7)(E) (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
Subject: RE: DRAFT: Border Wall Weekly (22-26 July)

(b)(6);(b)(7)(C)

Please see below for draft weekly. The two highlights are reminders to circle back wit (b)(6);(b)(7)(C) following the PMR. Holding off on updating the card until we hear back from him!

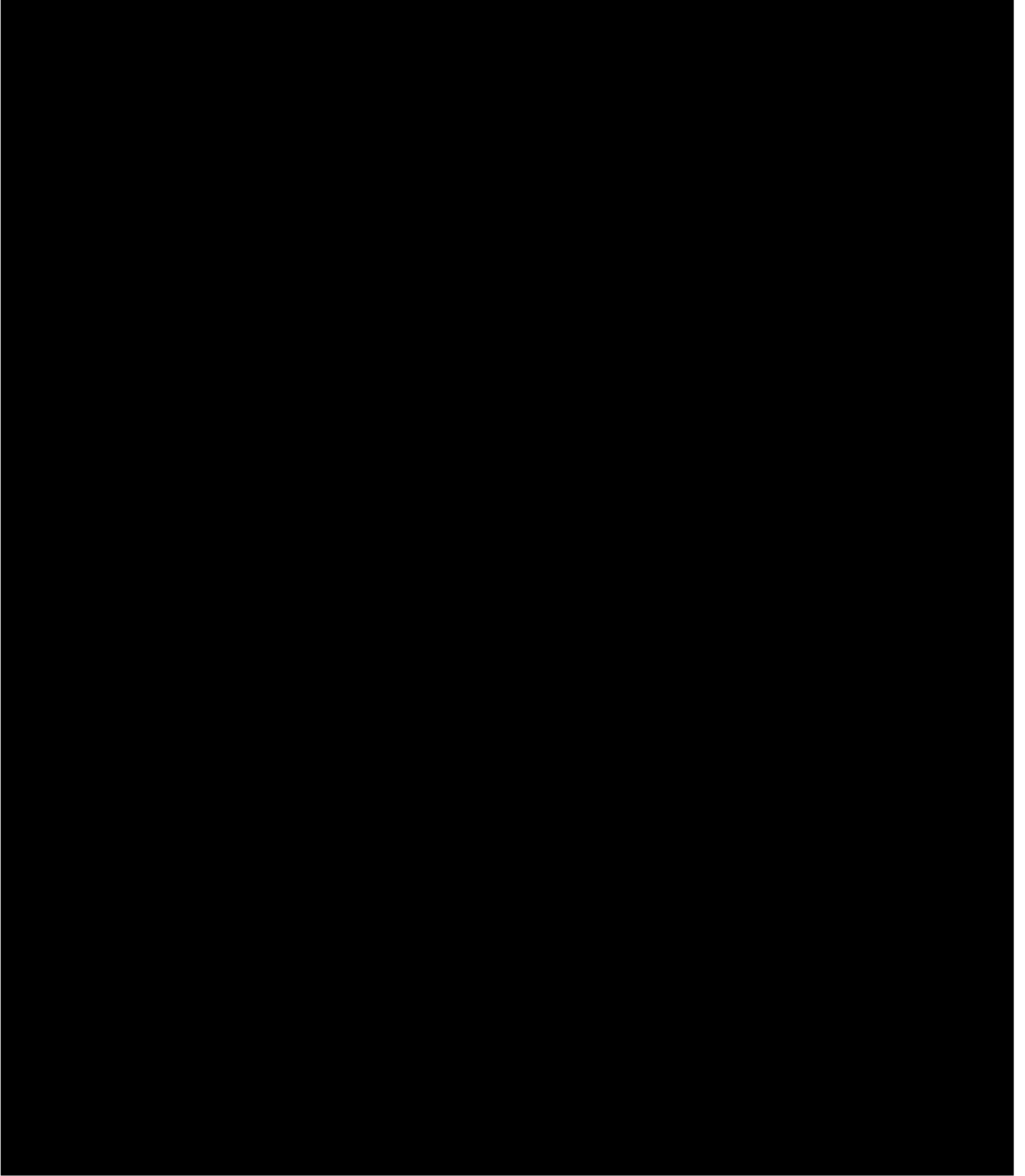
Please let me know if you have any questions or further updates!

Best,

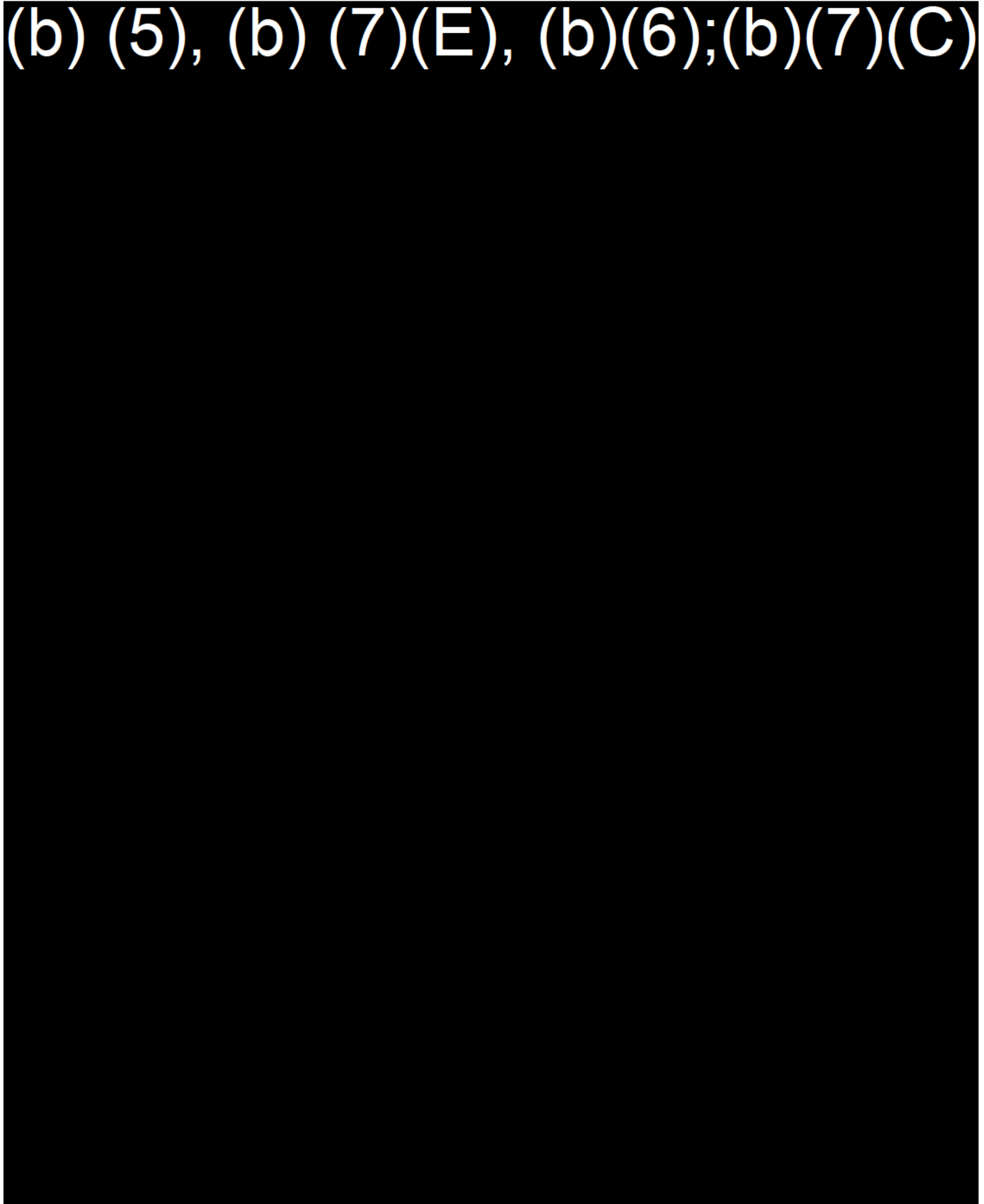
(b)(6);(b)(7)(C)

(b) (5), (b) (7)(E)

(b) (5), (b) (7)(E), (b)(6);(b)(7)(C)



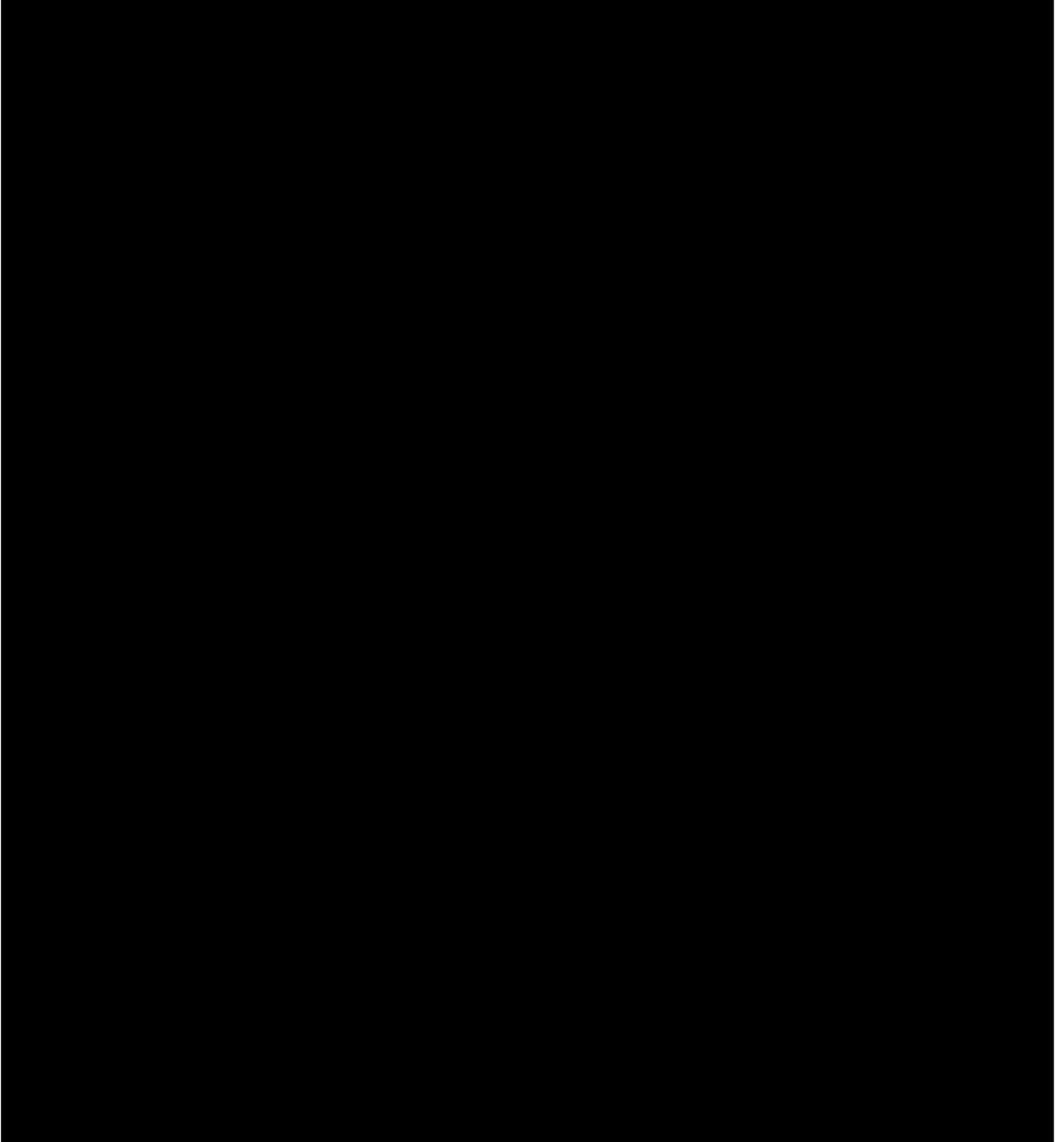
(b) (5), (b) (7)(E), (b)(6);(b)(7)(C)



(b) (5), (b) (7)(E)



(b) (5), (b) (7)(E)



(b) (5), (b) (7)(E)

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From: PROVOST, CARLA (USBP)
Sent: Thursday, July 25, 2019 2:35 PM
To: MARTIN, JERRY B
Cc: LUCK, SCOTT A (USBP); HASTINGS, BRIAN S (b)(6);(b)(7)(C)
Subject: Re: We Build the Wall-Planned Event

Please make sure the 4th floor is aware

Carla L. Provost
Chief
U. S. Border Patrol
(b)(6);(b)(7)(C)

On Jul 25, 2019, at 1:32 PM, MARTIN, JERRY (b) (6), (b) (7)(C) > wrote:

Chief and Deputy,

For your visibility, We Build The Wall has scheduled a Border Wall Symposium today through Saturday at the Sunland Park project location. Below is a list of today's speakers and events. You'll notice that Brandon Judd will be present as will high ranking members of Congress and Donald Trump Jr.. On a related note, we have completed the assessment on this property and will be ready to tee up with our recommendation within the next week or so.

VR

Brian Martin
U.S. Border Patrol
Chief of Strategic Planning and Analysis
Washington, DC
O (b)(6);(b)(7)(C)

From (b)(6);(b)(7)(C)
Sent: Thursday, July 25, 2019 12:55 PM
To: MARTIN, JERRY (b) (6), (b) (7)(C)
Subject: FW: We Build the Wall-Planned Event

Here's the email chain below on the symposium, but I also copied out the website agenda for today that shows Judd as a speaker for ease.

08:30

Welcome Kris Kobach

08:45

The Current Crisis: Facts, Figures and Analysis (b) (6)
Introduction by Kris Kobach

10:00

Defending America and Her Border (b) (6), Brandon Judd, border patrol agents Introduction by Kris Kobach

11:15

The Wall We Built Brian Kolfage D (b) (6)

11:30

The Politics of Immigratio (b) (6) an (b) (6) Introduction by Brian Kolfage

12:15

Buffet Lunch

12:30

Keynote Speakers Introduction by Brian Kolfage

13:30

The Grassroots Fight for Border Security (b) (6) Introduction b (b) (6)

13:45

Open Border Churches: Human Traffickers Hiding behind the Cros (b) (6) Introduction by Congressman Tom Tancredo

14:30

Every Town, a Border Town: The Impact of Immigration on American Cities Sheriff Clarke (b) (6), Mary Ann Mendoza, Steve Ronnebeck, Congressman Tom Tancredo Introduction and discussion led by John Fredricks

15:45

Using Citizen Journalism to Drive the National Narrative (b) (6), Typical Liberal (b) (6) Introduction and Moderated by Brian Kolfage

16:45

A Nation of Legal Immigrant (b) (6) Introduction b (b) (6)

(b)(6);(b)(7)(C)

Desk (b)(6);(b)(7)(C)

Mobile (b)(6);(b)(7)(C)

From (b)(6);(b)(7)(C)

Sent: Monday, July 22, 2019 4:24 PM

To: MARTIN, JERRY (b) (6), (b) (7)(C) SINGLETON, RUYNARD R

(b) (6), (b) (7)(C)

Cc (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

Subject: FW: We Build the Wall-Planned Event

FYSA

(b)(6);(b)(7)(C)

Desk (b)(6);(b)(7)(C)

Mobile (b)(6);(b)(7)(C)

From (b)(6);(b)(7)(C)

Sent: Monday, July 22, 2019 4:00 PM

To (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

Cc (b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

Subject: FW: We Build the Wall-Planned Event

(b)(6);(b)(7)(C),

Please see email traffic below from Santa Teresa station in regard to a "Wall Symposium" that is scheduled to take place at the new wall that was built by Fisher (We Build the Wall) group. Below is the website that was provided to me by their Foreman Mike Furey, that lists the attendees and a countdown.

THanks

<http://thewallsymposium.com/>

(b)(6);(b)(7)(C), Program Manager
Border Wall Program Management Office
United States Border Patrol
Program Management Office Directorate

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

From (b)(6);(b)(7)(C)

Sent: Monday, July 22, 2019 9:02 AM

To (b)(6);(b)(7)(C)

(b)(6);(b)(7)(C) >

Cc (b)(6);(b)(7)(C)

(b)(6);(b)(7)(C); EPT-LEO (b) (7)(E)

Subject: We Build the Wall-Planned Event

(b)(6);(b)(7)(C)

As requested, I reached out to (b) (6) and he confirmed that an event was taking place Thursday-Saturday at the site of the new wall at the (b) (7)(E) area. He was unwilling to share details so I contacted (b)(6);(b)(7)(C) who reached out to the site foreman. (b)(6);(b)(7)(C) was just informed by the foreman that FOX News will cover a "Wall Symposium" on Thursday at 1800 hours. Present at this event will be some high ranking member of congress, Donald Trump Jr. is expected to be present as well. There is an active attempt to keep this event concealed and without direct contact with the We Build the Wall folks we seem to be out of the loop. (b)(6);(b)(7)(C) has requested a schedule/timeline of events which the foreman has already indicated that he would share. (b)(6);(b)(7)(C) will forward these to us as soon as he gets it.

(b)(6);(b)(7)(C)

Deputy Patrol Agent In Charge
Santa Teresa Border Patrol Station

(b)(6);(b)(7)(C) (b)(6);(b)(7)(C)

Sent: Friday, July 26, 2019 8:46 AM
To: (b)(6);(b)(7)(C) (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
Cc: (b)(6);(b)(7)(C) BORDERWALLTASKS (b) (6), (b) (7)(C)
Subject: RE: FO (b)(6);(b)(7)(C) REVIEW: Border Wall Weekly (22-26 July)

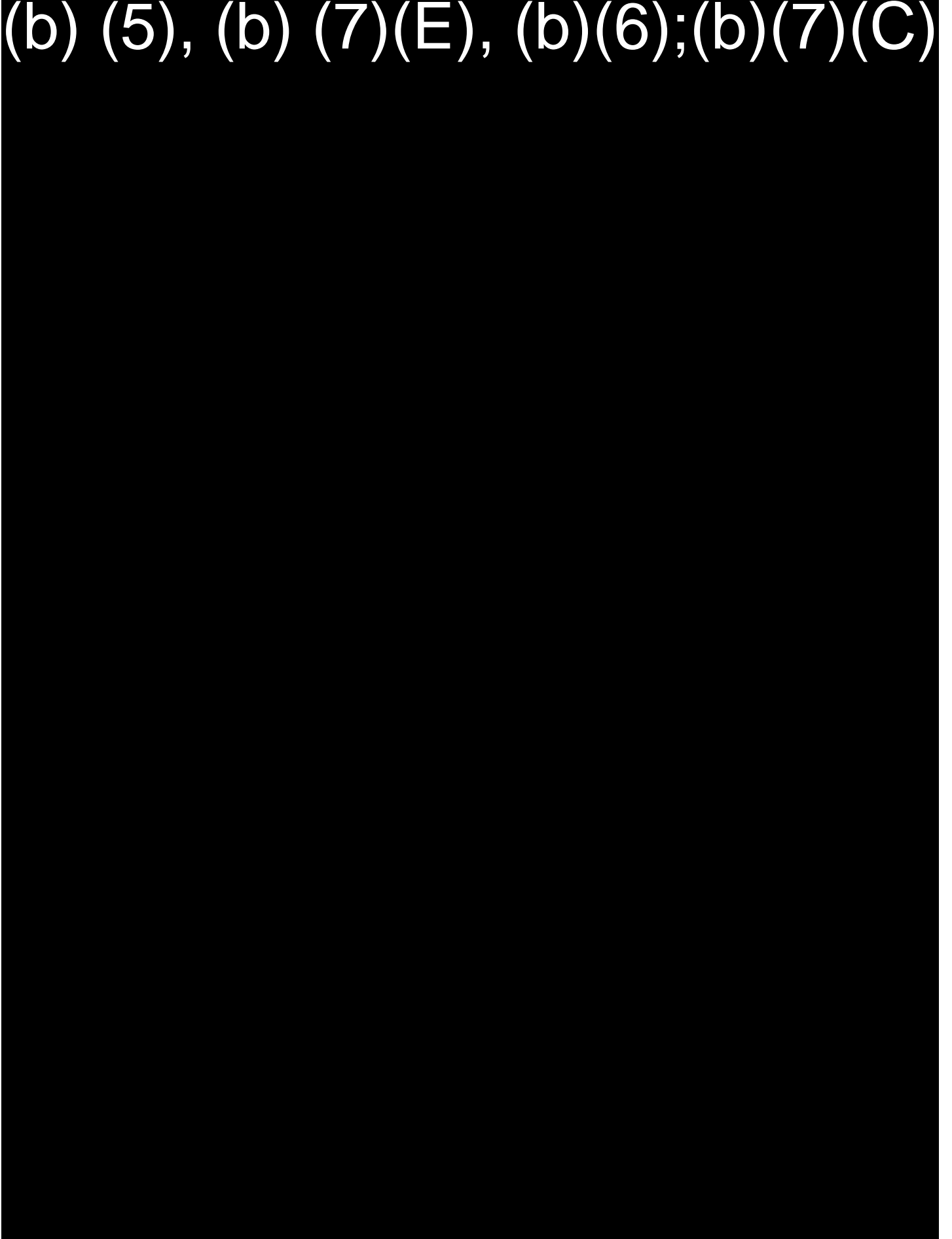
Added a sentence for RG (b) (7)(E) below based on PMR discussions.

From (b)(6);(b)(7)(C)
Sent: Friday, July 26, 2019 8:20 AM
To (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
(b) (6), (b) (7)(C)
Cc (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)
BORDERWALLTASKS (b) (7)(E) (b)(6);(b)(7)(C)
Subject: FOR (b)(6);(b)(7)(C) REVIEW: Border Wall Weekly (22-26 July)
Importance: High

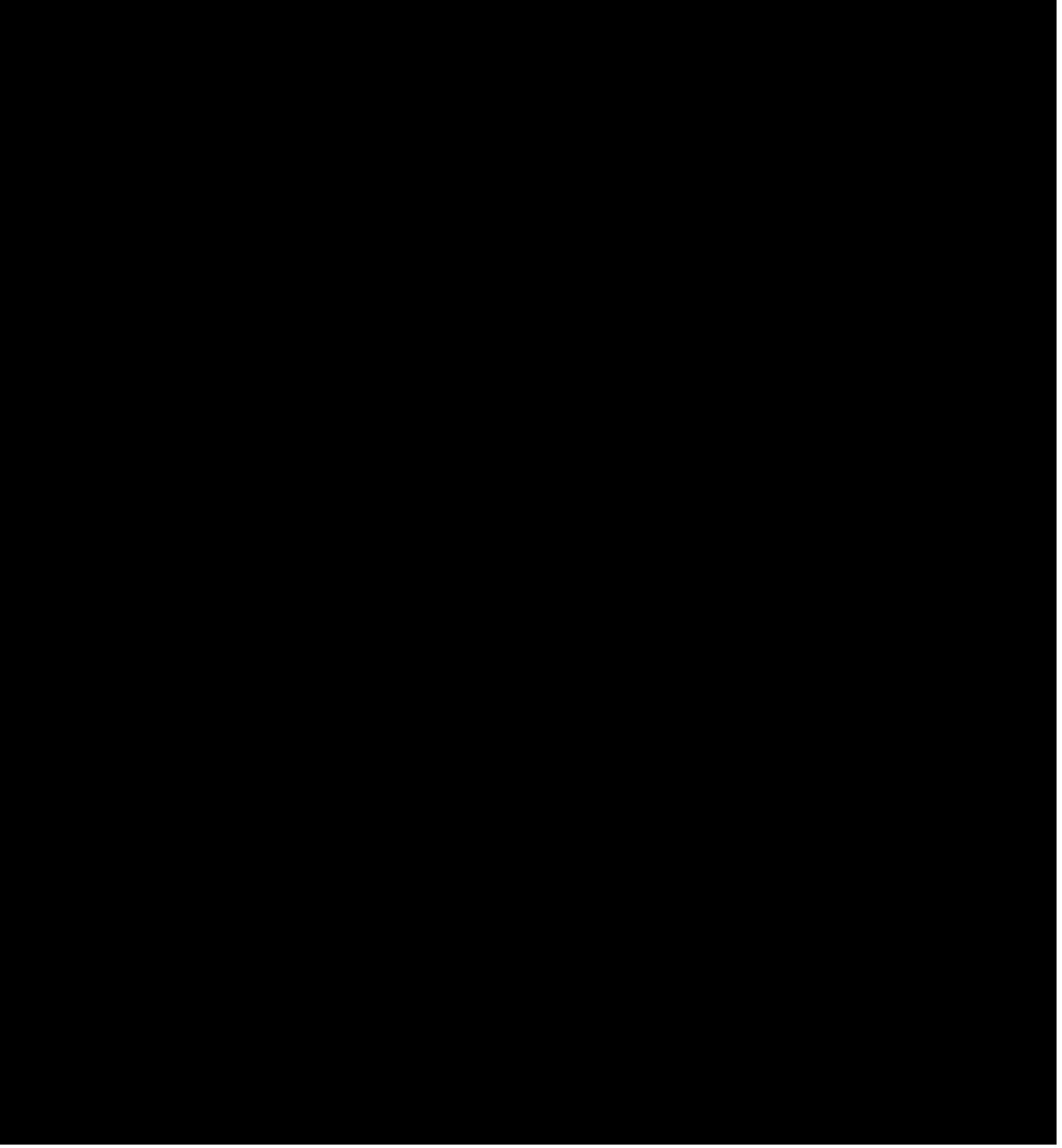
(b)(6);(b)(7)(C) For your review (b)(6);(b)(7)(C) updated based on the PMR but I do not have final confirmation fro (b)(6);(b)(7)(C) on content. I have 3 notes for him that I want to verify. All my comments are incorporated.

(b) (5), (b) (7)(E)

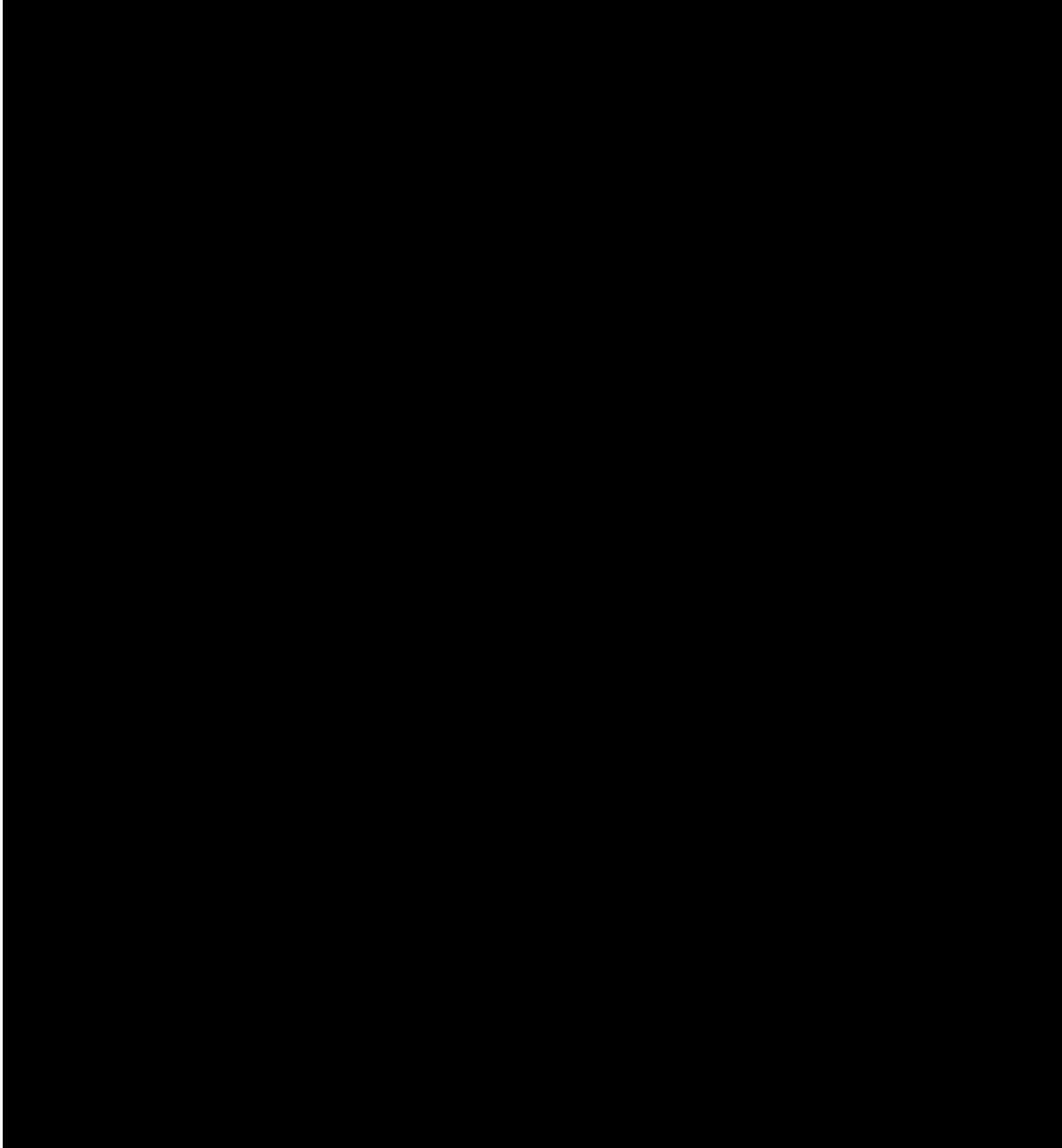
(b) (5), (b) (7)(E), (b)(6);(b)(7)(C)



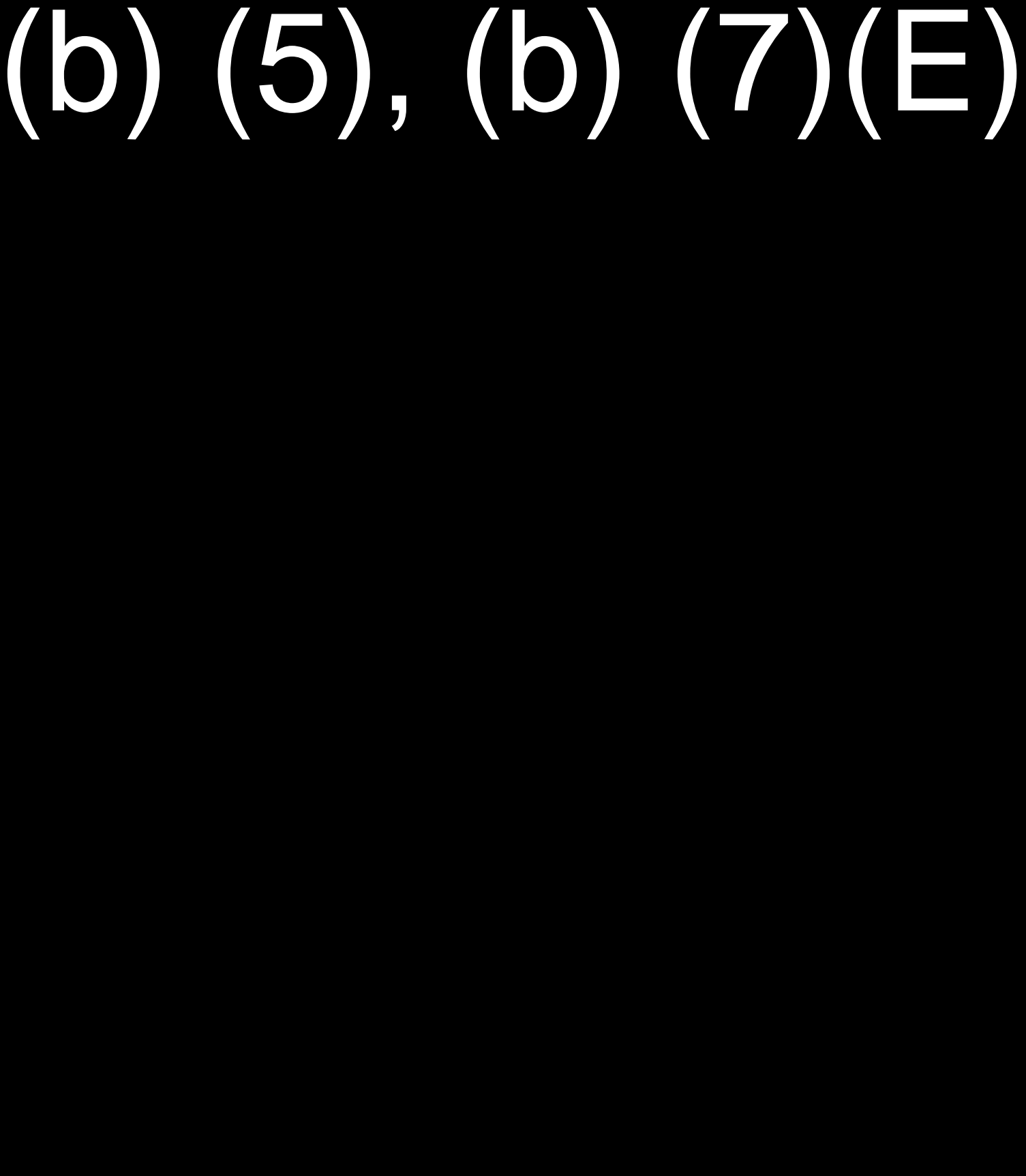
(b) (5), (b) (7)(E)



(b) (5), (b) (7)(E)



(b) (5), (b) (7)(E)



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disposed of in accordance with Department of Homeland Security policy relating to FOUO information, and is not to be released to the public or personnel who do not have a valid "need to know" without prior approval.

From: (b)(6);(b)(7)(C)
Sent: Friday, July 26, 2019 8:47 AM
To: BORDERWALLTASKS
Subject: FW: USIBWC requests of WBTW
Attachments: Anexo Escrito Recorrido 20190604.pdf; USIBWC Comments for Bollard Gate Proposal BACKCHECK COMMENTS 07-10-2019.pdf; 2019 06 20 Demand Letter to IBWC re Private Border Wall.docx.pdf; Protective Works Above AD CAD New Mexico Central 9.21.pdf

Follow Up Flag: Follow up
Flag Status: Completed

(b)(6);(b)(7)(C) PMP
Business Operations Director
Border Wall Program Management Office
United States Border Patrol
Program Management Office Directorate
Desk (b)(6);(b)(7)(C)
Cell Phone (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)

From: Rebecca Rizzuti <rebecca.rizzuti@ibwc.gov>
Sent: Thursday, July 25, 2019 3:10 PM
To: (b)(6);(b)(7)(C)
Cc: Jose Nunez <jose.nunez@ibwc.gov>; Padinare Unnikrishna <padinare.unnikrishna@ibwc.gov> (b) (6)
Subject: USIBWC requests of WBTW

This message classified as **Official - SBU**

Thanks for the call yesterday

I'm following up on our homework which was to provide to CBP the list of requests we are making of WBTW for their gate:

- a. The attached PDF titled (USIBWC Comments for Bollard Gate Proposal BACKCHECK COMMENTS 07-10-2019.pdf" lists in detail some of the technical information we are asking of them (ie, drainage reports, hydraulic analyses, design drawingsetc.) and some other items we are requesting from them. This is our most recent list of requests made to them. Also, at the end of this document, you will find photos depicting the encroachments into Mexico. The following items are in the PDF, but I thought we'd highlight them to you as these are less technical in nature.
 - i. Documents that reflect that WBTW conducted requested consultation with NM Env. Dept. , NM SHPO, USFWS, USACE.
 - ii. Mechanize the gate.
 - iii. Plan for desilting of drainage ponds
 - iv. Plan for maintenance of the gate

- v. Liability insurance or other financial commitment to cover injuries or damages caused by the gate or caused by defect in design.
 - vi. We are also requesting that WBTW remove the encroachments into Mexico. This is more involved than just removing rocks as at least one of the encroachments looks like it is used to support the base of the gate. So, it seems like it is part of the structure. The attached PDF titled "Protective Works Above AD CAD new Mexico Central 9.21.pdf" depicts the location of the encroachments on a map. The attached PDF titled "Anexo Escrito Recorrido 20190604" are the pictures provided to us by (b) (5) regarding the encroachments.
- 2) Attached PDF titled "2019_6_20 Demand Letter to IBWC re Private Border Wall" is the ACLU's demand letter to the USIBWC. This lays out the basis of their potential legal claims.
- 3) With regard to our suggestion to CB (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

Respectfully,

Rebecca A. Rizzuti

Assistant Legal Adviser, USIBWC
4171 N. Mesa, Bldg C-100
El Paso, TX 79902
(915) 832-4729 (OFFICE)
(b) (6) (CELL)

This message is classified as **Official - SBU** by IBWC\Rebecca.Rizzuti on Thursday, July 25, 2019 1:08:16 PM



June 20, 2019

SENT VIA EMAIL

Matt Myers
Chief Counsel
U.S. International Boundary and Water Commission

Rebecca Rizzuti
Attorney
U.S. International Boundary and Water Commission

RE: Unlawful private border gate on federal levee road in Sunland Park, New Mexico

Dear Mr. Myers and Ms. Rizzuti:

We write with serious concern about the unlawful private border gate (“gate”) that has been constructed on a federal levee road in Sunland Park, New Mexico, by the extremist group We Build the Wall (“WBW”) and an associated group of vigilantes (together, “the applicants”). As a threshold matter, the U.S. International Boundary and Water Commission (“IBWC”) must deny the permit application for the already constructed gate; otherwise, the agency risks violating several laws that apply to the permit, as discussed below. We also urge the IBWC to coordinate with the U.S. Attorney for the District of New Mexico and other federal and state agencies to prevent the applicants from continuing to take, and trespass on, federal land; stop the applicants from continuing to harm local air, water, and economic environments, as well as threaten the area’s imperiled species; require the applicants to immediately remove the gate to redress these violations and harms; and compel the applicants to pay for environmental remediation.¹

The applicants’ brazenly unlawful conduct sets a dangerous precedent.

Days ago, the extremist group WBW built a privately funded border gate on a federal levee road in Sunland Park, New Mexico. In building a giant steel gate, WBW worked alongside a group of vigilantes who recently held migrant families seeking asylum at gunpoint in Southern New

¹ We encourage the IBWC and U.S. Attorney for the District of Mexico to investigate other potential federal violations, including impeding federal employees from their work obligations through force, threat, and intimidation, and depredation of government property.

Mexico.² The applicants built the gate without obtaining a legally required federal permit from IBWC. The gate on federal land closes the gap in a longer wall that the applicants recently constructed on private land. The applicants constructed the longer wall on private land without first obtaining a permit from the City of Sunland Park.³ When the gate's steel door is closed, as it was for several days, it blocks the only remaining entry point from the United States to International Boundary Monument One ("Monument One"), a public monument and park area that are included on the National Register of Historic Places (Number 74001195).⁴

The applicants' unlawful conduct sets a dangerous precedent. They and their extremist supporters have repeatedly acted with impunity threatening public officials, journalists, and asylum seekers with violence while publicly flouting state and federal laws. The applicants now pledge to repeat what they have done in Sunland Park elsewhere along the U.S.-Mexico border.⁵

Although the applicants' conduct is unprecedented, the answer to their permit request is not a difficult one: the IBWC treaties, the U.S. Constitution, and federal law require the IBWC to deny the permit. Granting the permit application or a modified version of it would violate the law, condone the applicants' unlawful conduct, and embolden the applicants to continue taking, and trespassing on, federal land along the U.S.-Mexico border.⁶

I. IBWC's fundamental treaty and other legal obligations require that the agency deny the permit application.

The IBWC's fundamental purpose is to apply binational treaties and provide Mexico and the United States with "binational solutions" to questions about the international boundary and waters between the two countries. The IBWC's mission is "to apply the rights and obligations which the Governments of the United States and Mexico assume under the numerous boundary and water treaties and related agreements, and to do so in ways that benefits the social and economic welfare of the peoples on the two sides of the boundary and improves relations between the two countries."⁷ The IBWC's authority over activities in the Rio Grande Basin,

² Simon Romero, "Militia in New Mexico Detains Asylum Seekers at Gunpoint," N.Y. TIMES (April 18, 2019), <https://www.nytimes.com/2019/04/18/us/new-mexico-militia.html>.

³ A.P., "A New Mexico City Issued a Cease-and-Desist Order Against a Privately Funded Border Wall," TIME (May 29, 2019), <https://time.com/5597362/new-mexico-border-wall-cease-desist/>.

⁴ International Boundary Marker No. 1, U.S. and Mexico, *National Register Digital Assets*, <https://npgallery.nps.gov/AssetDetail/NRIS/74001195>.

⁵ The Trump Wall, *GoFundMe*, <https://www.gofundme.com/TheTrumpWall> ("PROJECTS 2 & 3 : WILL ANNOUNCE LOCATION WHEN CONSTRUCTION IS COMPLETE").

⁶ The letter writers acknowledge and thank ACLU of New Mexico Legal Assistant Elsa Goossen and ACLU Border Rights Center Legal Intern Eden Klein for their significant contributions to this letter.

⁷ IBWC, "Its Mission, Organization and Procedures for Solution of Boundary and Water Problems," https://www.ibwc.gov/about_us/about_us.html.

where the gate is located, derives from binational treaties,⁸ U.S. statutes implementing those treaties,⁹ and binational minutes.¹⁰ Additionally, the U.S. Secretary of State has delegated the administration of certain lands to the IBWC.¹¹ The Secretary of State's delegated powers also appear to give the IBWC the authority "to issue revo[c]able licenses for public or private use for irrigation or other structures or uses not inconsistent with the use of such lands made, or to be made, by the United States, across any lands retained by the United States, and to execute all necessary leases, title instruments, and conveyances, in order to carry out the provisions of this section."¹²

The IBWC's Realty and Asset Management Office has established specific criteria for applicants who wish to build on IBWC-administered land.¹³ Among other requirements, the Realty and Asset Management Office requires applicants to provide "resource agency statements" from the appropriate Historic Preservation officer, U.S. Fish and Wildlife Service, and U.S. Army Corps of Engineers.¹⁴ Those statements must indicate that the resource agencies have no objections to the proposed construction. Additionally, the IBWC has established construction criteria requiring that the IBWC review and approve gates on levee roads before they are constructed or installed.¹⁵

An unlawful gate built without a permit and without the required agency assessments and statements is at odds with the IBWC's fundamental purpose, treaty obligations, and rules all of which legally require the IBWC to protect the integrity of the Rio Grande, prevent flooding, and ensure easy access to IBWC diversion dams and other structures, including the American

⁸ Treaty to Resolve Pending Boundary Differences and Maintain the Rio Grande and Colorado River as the International Boundary, U.S.-Mex., Nov. 23, 1970, 23 U.S.T. 371 ("1970 Water Treaty"); Supplementary Protocol to the Chamizal Arbitration, U.S.-Mex., Dec. 5, 1910, 33 Stat. 2487 ("1910 Chamizal Protocol"); Convention for the Arbitration of the Chamizal Case, U.S.-Mex., June 24, 1910, 36 Stat. 2481 ("1910 Chamizal Convention"); Treaty Relating to the Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, U.S.-Mex., Feb. 3, 1944, 59 Stat. 1219 ("1944 Water Treaty"); Convention to Avoid the Difficulties Occasioned by Changes in the Beds of the Rio Grande and Colorado Rivers, U.S.-Mex., Mar. 1, 1889, 26 Stat. 1512 ("1889 Water Convention").

⁹ 22 U.S.C. §§ 277–277i.

¹⁰ IBWC, "Minutes Between the United States and Mexican Sections of the IBWC," https://www.ibwc.gov/Treaties_Minutes/Minutes.html.

¹¹ 22 U.S.C. § 277e.

¹² *Id.*

¹³ International Boundary and Water Commission, Realty and Asset Management Division, https://www.ibwc.gov/Permits_Licenses/boundary_realty.html.

¹⁴ *Id.*

¹⁵ IBWC, "Criteria for Construction Activities within the Limits of USIBWC Floodways," Volume IV Chapter 315 Handbook H315 (July 27, 2000), p. 20, https://www.ibwc.gov/Files/Construction_Criteria_Activities_w_Limits_USIBWC_Floodways_040219.pdf.

Diversion Dam, which is blocked when the gate is closed. Because of where it is built, the gate may increase the risk of flooding and may negatively affect the Rio Grande serious concerns that the Mexican IBWC has raised. The IBWC may not unilaterally consider a permit application without resource agency statements addressing a number of serious defects in the gate's purpose and structure:

- (1) **The gate serves no legitimate purpose that would justify a permit from the IBWC, whose authority is limited.** According to your office, the IBWC typically reviews and approves permits for utility firms wishing to extend their utility poles over federal land, and farmers wishing to use water for irrigation. These activities, which require easements or permits from the IBWC, are consistent with the utilities' and farmers' legitimate business purposes, delivering utilities and irrigating crops. Moreover, in considering permits for these legitimate activities, the IBWC must still assess whether the activity may undermine its flood prevention activities. Although we have not seen a copy of the permit application (we are currently requesting it under the Freedom of Information Act), it appears that the American Eagle Brick Company and WBW's interest in building the gate is exclusively to block people from crossing a federal road.¹⁶ American Eagle Brick and WBW have no legal authority to block people from passing on a federal road and may not request a permit to do so. If the American Eagle Brick Company wishes to block people from entering its property, it must use its own resources to obtain a permit and erect a fence on the perimeter of its own land to accomplish that purpose. It may not take a federal road, which is unnecessary for this private purpose.
- (2) **The gate implicates the First Amendment to the Constitution and the National Historic Preservation Act and several federal environmental laws—federal laws that the IBWC cannot unilaterally waive.** The IBWC may not waive the Constitution or its own rules in considering a permit application, nor can it ignore federal laws which require that the permit applicants obtain the requisite agency statements assessing compliance with federal historic preservation and environmental laws from the appropriate Historic Preservation officer, U.S. Fish and Wildlife Service, and U.S. Army Corps of Engineers. The applicants must obtain these statements before the permit application is considered to be complete.¹⁷ The IBWC must require WBW to supplement its request with these required agency determinations.
- (3) **The IBWC has no authority to grant a permit for an unlawful gate *ex post facto*.** None of the IBWC's rules or federal law authorize the IBWC to exempt the gate from the permit process or to provide a permit for a gate that was built without complying with the agency review processes under the IBWC's own rules. If the IBWC violates its own rules and exempts the gate from other agencies' review processes, not only will it embolden

¹⁶ Brian Kolfage, @BrianKolfage, Twitter (June 15, 2019, 5:50 PM), <https://twitter.com/BrianKolfage/status/1140059150040408064>.

¹⁷ IBWC, Reality and Asset Management Division, https://www.ibwc.gov/Permits_Licenses/boundary_realty.html.

extremists to take federal property for private purposes and construct without permits, it will also expose the IBWC to legal liability and set a dangerous precedent.

II. The unlawful gate raises serious concerns under the First Amendment.

Monument One has significant binational historical and cultural significance. School children and teachers often visit the monument park on field trips. Families picnic, jog, recreate, and celebrate their bicultural identities in the park.¹⁸ And for decades, people have gathered at the Monument to celebrate bicultural identity and unity.¹⁹ These expressive activities are protected under the First Amendment. The Supreme Court and Courts of Appeals have consistently interpreted the First Amendment broadly to protect not only written and spoken words, but also other expressive activities and symbolic speech that communicate ideas, such as picketing and leafleting,²⁰ refusing to salute²¹ or burning²² the American flag, wearing black armbands,²³ engaging in a sit-in in a public reading room of a library,²⁴ and sharing food with unhoused people in a park.²⁵

When it locked the gate for several days, WBW unilaterally locked border residents out of their own culture and history. WBW and American Eagle Brick have wrongly claimed on several occasions that they either own or control portions of the federal levee road and a federal easement. Just days ago, a private vigilante and WBW supporter who manages the American Eagle Brick Company threatened and harassed ACLU staffers who tried to visit Monument One.²⁶ The manager appears to have directed his employees to block the staffers from walking along the federal levee road easement under the railroad tracks, an area that is necessary to pass

¹⁸ Debbie Nathan and Jordyn Rozensky, “Private Wall Expands onto Federal Land, Blocking Access to Historic Site,” *The Intercept* (June 11, 2019, 6:30 a.m.), <https://theintercept.com/2019/06/11/private-border-wall-federal-land/>.

¹⁹ See, e.g., “Border Park is Proposed,” *EL PASO HERALD-POST* (May 25, 1938), p. 7; “Dignitaries From Mexico, U.S. Will Dedicate Park,” *EL PASO HERALD-POST* (Dec. 7, 1972), p. 15; “Monument No. 1 Park Dedicated to ‘Unity,’” *EL PASO HERALD-POST* (Dec. 8, 1972), p. 5; “Unveil Plaques,” *El Paso Times* (Dec. 9, 1972), p. 9 (showing an image of “United States and Mexican federal and local authorities and representatives of civic and historical organizations of the two countries” dedicating “a Historical Park at International Boundary Monument No. 1”), p. 9; Leon Katz, “Boundary Monument worth Visiting,” *EL PASO TIMES* (Feb. 12, 2001), p. 6.

²⁰ See, e.g., *Carey v. Brown*, 447 U.S. 455 (1980); *Gregory v. Chicago*, 394 U.S. 111, 112 (1969); *Shuttlesworth v. Birmingham*, 394 U.S. 147, 152 (1969); *Thornhill v. Alabama*, 310 U.S. 88 (1940).

²¹ *W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 634 (1943).

²² *Texas v. Johnson*, 491 U.S. 397 (1989).

²³ *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 505 (1969).

²⁴ *Brown v. State of La.*, 383 U.S. 131 (1966).

²⁵ *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 901 F.3d 1235, 1238 (11th Cir. 2018).

²⁶ ACLU of New Mexico, @aclunm (June 7, 2019, 4:00 pm), Twitter, <https://twitter.com/ACLUNM/status/1137132269364162560>.

in order to reach Monument One. When the staffers arrived at the entrance to Monument One, they tried to open the large steel WBW gate and could not because it was locked.

Under the First Amendment, streets and parks “have immemorially been held in trust for the use of the public, and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.”²⁷ The Supreme Court recently observed that “a park is a traditional public forum for speeches and other transitory expressive acts[.]”²⁸ “In these quintessential public forums, the government may not prohibit all communicative activity.”²⁹ While the government may impose “content-neutral restrictions on the time, place, or manner of speech in a public forum[.]” those restrictions must meet three criteria. “First, the regulations may not delegate overly broad licensing discretion to a government official. Second, the scheme must be narrowly tailored to serve a significant governmental interest. And third, it must leave open ample alternatives for communication.”³⁰

In speaking with your office, it is unclear how the IBWC or U.S. Customs and Border Protection (“CBP”) will manage access to Monument One: this presents a serious problem under the First Amendment. The IBWC may not, for example, require that would-be visitors who wish to exercise their First Amendment rights at Monument One apply in advance for a permit to pass the gate that would almost certainly violate the first criterion (“overly broad licensing authority”) under the time-place-manner analysis.

Second, the IBWC has vaguely claimed that “security concerns” now require the gate to be closed at “night[.]”³¹ Given that the public has had free and unfettered access to Monument One since 1855, it is unclear why “security concerns” now require an unlawful gate to be closed on federal land at night. It is also unclear when a person may access Monument One to engage in protected First Amendment activities because IBWC has not informed the public about the hours when the gate will be open and Monument One will be accessible. Moreover, the applicants have openly and publicly claimed that private “guards and security” will be posted at the gate when it is open, raising concerns that they may continue to interfere with public access to Monument One.³² The current uncertainty about public access raises serious concerns under the second criterion (that restrictions must be “narrowly tailored to serve a significant government interest”).

²⁷ *Hague v. CIO*, 307 U.S. 496, 515 (1939).

²⁸ *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 464 (2009).

²⁹ *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983).

³⁰ *Boardley v. U.S. Dep’t of Interior*, 615 F.3d 508, 516 (D.C. Cir. 2010) (citing *Forsyth Cty., Ga. v. Nationalist Movement*, 505 U.S. 123, 130 (1992)).

³¹ IBWC, “Private Gate on Federal Property to be Locked at Night” (June 11, 2019), https://www.ibwc.gov/Files/Press_Release_061119_2.pdf

³² “Locked gate put in by We Build the Wall cut by international water panel,” EL PASO TIMES (June 11, 2019, 3:32 p.m., updated June 12, 2019, 9:53 a.m.), <https://www.elpasotimes.com/story/news/immigration/2019/06/11/ibwc-cuts-locked-gate-put-up-we-build-wall-sunland-park-nm/1425618001/>

Finally, when the gate is closed and locked, as it was for many days, despite the IBWC's demands that it remain open, there is no "alternative[] for communication." Monument One is a significant place for First Amendment activity because it celebrates the very bicultural identity that the gate attacks. The gate blocks access to Monument One from the United States. If the IBWC does not enforce its legal obligation to keep the gate open, it will prevent people from having access to Monument One. Celebrating one's bicultural identity across the Rio Grande in El Paso or on the federal levee road in front of the unlawful gate – the two public areas that are closest to Monument One when the gate is closed – are not appropriate alternatives to Monument One.

III. Section 106 of the National Historic Preservation Act requires federal agencies, including the IBWC, to undertake a detailed review process in which the Advisory Council on Historic Preservation, state and local government officials, and the public are entitled to meaningfully participate.

The IBWC has no unilateral authority under federal law to issue a permit for a private border gate on federal land that blocks U.S. public access to Monument One, which is on the National Register of Historic Places.³³ Under Section 106 of the National Historic Preservation Act, any "project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency" including activities "requiring a Federal permit, license, or approval" is an "undertaking[.]"³⁴ The permit application proposing a gate construction project that would block access to Monument One is an "undertaking" under Section 106. Because the gate is an undertaking, the IBWC has a legal obligation to "take into account the effect of the undertaking on any historic property" and "afford the [Advisory] Council [on Historic Preservation] a reasonable opportunity to comment with regard to the undertaking."³⁵ In other words, the IBWC may not unilaterally permit the gate construction without first consulting with the Advisory Council on Historic Preservation and allowing it an opportunity to review and comment on the proposed permit.

The New Mexico state historic preservation officer, representatives of Sunland Park, and members of the public are also all entitled to meaningfully participate in the Section 106 review process.³⁶ Specifically, under Section 106, the IBWC "shall . . . initiate consultation with the appropriate [state historic preservation or tribal historic preservation] officer or officers [SHPO/THPO]" and "should consult with the SHPO/THPO in a manner appropriate to the agency planning process for the undertaking and to the nature of the undertaking and its effects on historic properties."³⁷ Additionally, federal law entitles a "representative of a local government with jurisdiction over the area in which the effects of an undertaking may occur" to

³³ International Boundary Marker No. 1, U.S. and Mexico, *National Register Digital Assets*, <https://npgallery.nps.gov/AssetDetail/NRIS/74001195>.

³⁴ 54 U.S.C. § 300320.

³⁵ *Id.* § 306108.

³⁶ 36 C.F.R. §§ 800.1–800.13 (regulations governing the Section 106 process).

³⁷ *Id.* § 800.3 (emphasis added).

participate in the Section 106 process as a consulting party.³⁸ Finally, Section 106 requires the IBWC to provide notice and an opportunity for the public to comment because “[t]he views of the public are essential to informed Federal decisionmaking in the section 106 process.”³⁹ Specifically, the IBWC “official shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses, and the relationship of the Federal involvement to the undertaking.”⁴⁰ In short, Section 106 requires that the IBWC engage state and local government officials and the public in reviewing how the proposed permit, if granted, would affect Monument One.

Because the gate, when closed, prevents U.S. public access to Monument One, the IBWC should not grant the permit because it would fundamentally alter the character of, and would block public access to, Monument One. What is more, the permit applicants’ conduct both in building the gate without a permit and in defying the IBWC’s demands that the gate remain unlocked so as not to prevent access to Monument One indicates that the IBWC cannot trust that the applicants will abide by any requirements that the IBWC might impose in conditionally approving the permit. Under the NHPA, the IBWC cannot approve the permit.

IV. The Antideficiency Act may prohibit the IBWC or any other federal agency from accepting the gate as a donation or a gift.

The permit applicants have boasted that they have given or intend to give the gate keys to the U.S. Border Patrol.⁴¹ We understand that the IBWC currently has the keys to the already constructed gate. If the IBWC or the Border Patrol accepts the wall or the gate as a gift or as a donation even tacitly, by accepting keys to take control over it the government will likely violate the Antideficiency Act.⁴² The Antideficiency Act prohibits the government from accepting voluntary services for the United States. The purpose of the law is to prevent the U.S. government from spending money that Congress has not appropriated for it to spend. In essence, the law prevents executive agencies from making an end run around the constitutional separation of powers. Because Article I of the U.S. Constitution gives Congress the power of the purse, an executive agency like the IBWC or the Department of Homeland Security may not overstep its constitutional authority in accepting gifts or donations for construction projects that Congress did not fund through its appropriations process. To erect the gate on federal land, WBW put a

³⁸ *Id.* § 800.2(c)(3).

³⁹ *Id.* § 800.2(d).

⁴⁰ *Id.*

⁴¹ Aaron Martínez, “Privately funded wall built at El Paso: ‘Why wouldn’t we allow it?’ land owner asks,” EL PASO TIMES (May 27, 2019, 12:39 p.m., updated at 5:48 p.m.), <https://www.elpasotimes.com/story/news/immigration/2019/05/27/privately-funded-border-wall-goes-up-near-el-paso-gofundme-money/1251156001/> (quoting former Kansas Secretary of State Kris Kobach, “We built the wall and then hand the keys to the Border Patrol and say ‘Here. Happy Memorial Day.’”)

⁴² 31 U.S.C. § 1342.

number of its employees and contractors to work for several days. Congress appropriated no federal money for the gate and the U.S. government did not compensate WBW for its labor in constructing the gate. By allowing the group to construct its gate on federal property, the IBWC is benefitting from unpaid, voluntary services, and appears to be violating the Antideficiency Act.⁴³

- V. Under the National Environmental Policy Act, the IBWC must evaluate the environmental, social, and economic impacts of the gate construction and consider reasonable alternatives.

Under the National Environmental Policy Act of 1969 (“NEPA”), the IBWC must evaluate the environmental, social, and economic impacts of the gate and consider reasonable alternatives to the gate itself including no action, or not permitting the gate whatsoever. As “our basic national charter for protection of the environment,”⁴⁴ NEPA’s purpose is to “foster excellent action,” and “is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.”⁴⁵ Specifically, NEPA requires federal agencies like the IBWC to prepare an environmental impact statement (“EIS”) for all “major Federal actions significantly affecting the quality of the human environment.”⁴⁶ Federal regulations implementing NEPA require the IBWC to evaluate the environmental, social, and economic impact of any major federal action it intends to take including issuing a permit for a gate on federal land as well as preferable alternatives to that action.⁴⁷ The IBWC has no authority to exempt a gate construction project on federal land from NEPA.⁴⁸

Under Tenth Circuit law, when private entities propose major actions on federal land, the private entities’ actions are subject to NEPA if federal approval is a prerequisite to taking that action. “[C]onstruction . . . activities” on federal land requiring permits are precisely the kind of major actions by nonfederal actors that are subject to NEPA.⁴⁹ The IBWC’s own regulations align with

⁴³ 31 U.S.C. § 1342 (“An officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property.”)

⁴⁴ 40 C.F.R. § 1500.1(a).

⁴⁵ *Id.* § 1500.1(c).

⁴⁶ 42 U.S.C. § 4332(C).

⁴⁷ *Id.*

⁴⁸ Operational Procedures for Implementing Section 102 of the NEPA, Other Laws Pertaining to Specifics Aspects of the Environment and Applicable Executive Orders (46 FR 44083, Sept. 2, 1981).

⁴⁹ *Sierra Club v. Hodel*, 848 F.2d 1068, 1089 (10th Cir. 1988), *overruled on other grounds by Vill. of Los Ranchos De Albuquerque v. Marsh*, 956 F.2d 970 (10th Cir. 1992) (NEPA “regulations establish that major federal action encompasses not only actions by the federal government but also actions by nonfederal actors with effects that may be major and which are potentially subject to Federal control and responsibility. Nonfederal major federal action refers, inter alia, to activities regulated or approved by

the Tenth Circuit’s view that private construction projects on federal land implicate the agency’s compliance with NEPA: “[a]ctions planned by a private applicant or non-federal entities prior to or concurrent with the initiation of the Section’s studies, or involving an existing project shall be handled . . . in accordance with [Council on Environmental Quality] CEQ Regulations[.]”⁵⁰ The CEQ regulations mandate that IBWC do the following, among other requirements:

- (1) “Apply NEPA early in the process.”⁵¹
- (2) Engage in an “early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action.”⁵²
- (3) Prepare an environmental impact statement or assessment.⁵³
- (4) In preparing the EIS or EA (Environmental Assessment), consider a “range of alternatives[.]”⁵⁴ including “the alternative of no action.”⁵⁵
- (5) In preparing the EIS or EA, discuss the purpose and need for the project.⁵⁶
- (6) Publish the draft environmental impact statement and solicit public comment.⁵⁷
- (7) Assess and consider the public’s comments both individually and collectively and respond to the comments.⁵⁸
- (8) Circulate the final environmental impact statement.⁵⁹

The gate implicates several potential environmental impacts, including but not limited to the surrounding communities’ air and land quality, as well as economic conditions related to the Monument. Here, the IBWC’s consideration of the permit application constitutes a federal agency action that is subject to NEPA compliance. At a bare minimum, then, the IBWC may not

federal agencies, including approval of specific projects such as construction ... activities located in a defined geographic area. Such approval may occur through permit or other regulatory decision as well as federal and federally assisted activities. A leading commentator has observed: [T]he distinguishing feature of federal involvement is the ability to influence or control the outcome in material respects. The EIS process is supposed to inform the decision-maker. This presupposes he has judgment to exercise. Cases finding federal action emphasize authority to exercise discretion over the outcome.) (internal citations and quotation marks omitted).

⁵⁰ Operational Procedures for Implementing Section 102 of the NEPA, Other Laws Pertaining to Specifics Aspects of the Environment and Applicable Executive Orders (46 FR 44083, Sept. 2, 1981).

⁵¹ 40 CFR § 1501.2.

⁵² *Id.* § 1501.7

⁵³ *Id.* § 1501.4(b).

⁵⁴ *Id.* § 1505.1(e).

⁵⁵ *Id.* § 1502.14(d).

⁵⁶ *Id.* §§ 1502.13, 1508.9(b).

⁵⁷ *Id.* § 1503.1.

⁵⁸ *Id.* § 1503.4.

⁵⁹ *Id.* § 1502.19.

approve the permit application before it completes an EA to evaluate the impacts of the project and determine whether a full-blown EIS is necessary, and a separate Finding of No Significant Impact (“FONSI”). However, because the project implicates several of the NEPA “significance factors” that govern when an EIS is necessary—including, *e.g.*, the precedential nature of this project; the risk to meaningful access to Monument One; and many other threatened legal violations⁶⁰—it is apparent that the IBWC could not approve the permit application before it prepares an EIS.

VI. The gate raises serious concerns under the Endangered Species Act.

The gate and permit application raise serious concerns under the Endangered Species Act of 1973 (“ESA”). Numerous imperiled species are located near or around the gate, including the Mexican gray wolf that has been shown in the vicinity of the gate and the U.S.-Mexico border.

The ESA is the “most comprehensive legislation for the preservation of endangered species ever enacted by any nation.”⁶¹ The ESA’s purpose is to conserve and protect endangered and threatened species and their ecosystems.⁶² The primary mechanism by which the ESA achieves its purpose is by making it “unlawful for any person” to “take any [endangered or threatened] species within the United States” or to “cause to be committed” any “take[.]”⁶³ The ESA broadly defines the meaning of “take” as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct.”⁶⁴ The U.S. Supreme Court and the U.S. District Court for the District of New Mexico have likewise interpreted “take” “as broad as possible[.]” including “every conceivable way in which a person can ‘take’ or attempt to ‘take’ any fish or wildlife.”⁶⁵ The ESA establishes broad liability both for people who directly take and for government employees and officials who permit others to take endangered or threatened species.⁶⁶

Moreover, as a federal agency, IBWC has a separate ESA obligation to ensure that any activity it undertakes or approves is not likely to jeopardize any listed species or critical habitat.⁶⁷ To meet this requirement, IBWC must consult with the U.S. Fish and Wildlife Service (“FWS”) and prepare a Biological Assessment to address species impact issues. At minimum, IBWC must

⁶⁰ See 40 C.F.R. § 1508.27 (listing factors for determining whether an EIS must be prepared).

⁶¹ *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 515 U.S. 687, 698 (1995) (quoting *TVA v. Hill*, 437 U.S. 153, 180 (1978)).

⁶² 16 U.S.C. § 1531(b)

⁶³ *Id.* § 1538(a)(1)(B), (g).

⁶⁴ *Id.* § 1532(19).

⁶⁵ *Middle Rio Grande Conservancy Dist. v. Babbitt*, 206 F. Supp. 2d 1156, 1174 (D.N.M. 2000) (quoting *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 515 U.S. 687, 704 (1995)).

⁶⁶ 16 U.S.C. §§ 1532(13), 1540(g)(1)(A).

⁶⁷ *Id.* § 1536(a)(2).

obtain FWS' concurrence that the project is not likely to adversely affect species. If any adverse effects may occur, IBWC must also obtain a full Biological Opinion from FWS detailing those effects and the steps that must be taken to mitigate them.⁶⁸ What IBWC may not do, however, is approve the permit application without complying with these critical processes designed to protect the Nation's endangered and threatened species.

Specifically, according to GPS telemetry data from wolf scientists, the Mexican gray wolf has been shown to have crossed the U.S.-Mexico border near the location of the gate.⁶⁹ The Mexican gray wolf is one of the most imperiled mammals in North America, and its survival depends on its ability to travel freely across the U.S.-Mexico border in order to mate with wolves in their non-natal population and thus increase the genetic diversity of the animals comprising both populations. The gate constitutes a physical obstruction to the Mexican gray wolf and its ability to cross the border and thus triggers the IBCW's consultation obligations under the ESA.

VII. The petition applicants likely violated the Clean Air Act and New Mexico's State Implementation Plan in failing to control fugitive dust while constructing the gate and the fence.

The permit applicants boast that they excavated "200,000 cubic yards" of earth in Sunland Park, Doña Ana County.⁷⁰ Their unlawful and hasty construction project likely violated New Mexico's State Implementation Plan ("SIP") under the federal Clean Air Act ("CAA") in failing to control fugitive dust. The fugitive dust rule specifically applies to construction and construction activities in Doña Ana and Luna Counties.⁷¹

The federal CAA is designed to preserve and improve the quality of ambient air in the United States in order to protect people's health and the environment. To accomplish the CAA's mandate, the Environmental Protection Agency ("EPA") promulgates National Ambient Air Quality Standards ("NAAQS").⁷² The CAA requires each state, in turn, to establish its own SIP to comply with the NAAQS.⁷³ Three years ago, the EPA required "[a]ll states having areas with historically documented or known seasonal events" affecting ambient air quality "to develop a mitigation plan."⁷⁴ Historically documented or known seasonal events include the seasonal dust that comes with high winds in Doña Ana and Luna Counties. In response to the EPA's mandate

⁶⁸ *Id.*

⁶⁹ Original data from Mexico Procuraduría Federal de Protección al Ambiente (PROFEPA), as relayed to the U.S. Fish and Wildlife Service on or about Jan. 27, 2017.

⁷⁰ We Build the Wall, "A Job Well Done With A Lot More To Come," YouTube (June 13, 2019), https://www.youtube.com/watch?time_continue=1&v=jWdOmVzBWLl.

⁷¹ N.M. Code R. 20.2.23 ("Fugitive Dust Control") (2019), <https://www.env.nm.gov/wp-content/uploads/2018/12/20.2.23-NMAC-1.pdf>.

⁷² 42 U.S.C. § 7409(a), (b).

⁷³ *Id.* § 7410(a)(1).

⁷⁴ 40 C.F.R. § 51.930(b)(1).

under the CAA, the New Mexico Environment Department promulgated a fugitive dust rule and mitigation plan.⁷⁵ This rule prohibits people from “caus[ing] or allow[ing] visible emissions from fugitive dust sources that: A. pose a threat to public health; B. interfere with public welfare, including animal or plant injury or damage, visibility or the reasonable use of property.”⁷⁶ The YouTube video of the fugitive dust alone raises serious questions about the applicants’ compliance with the fugitive dust rule.⁷⁷ Additionally, under the rule, “[t]he owner or operator of a fugitive dust source shall develop and maintain a dust control plan.”⁷⁸ It is not clear that the applicants and their supporters—including the American Eagle Brick company—have a dust control plan or are complying with it.

If the IBWC permits the gate, it would likely violate the CAA, specifically as implemented in New Mexico under the fugitive dust rule.

VIII. The applicants have likely violated the Clean Water Act in failing to obtain the requisite permit.

We understand that the IBWC is requiring the applicants to provide a stormwater runoff study. This is required under the Clean Water Act (“CWA”). But a study is not enough under the CWA. The CWA’s fundamental purpose is to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”⁷⁹ To achieve its purpose, the CWA prohibits any person from discharging any pollutant from a point source into navigable waters, unless they receive a permit that authorizes them to do so.⁸⁰ The word “pollutant” “means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.”⁸¹ Anyone who seeks to discharge any pollutant into navigable waters must apply for and comply with the terms and limits of a National Pollutant Discharge Elimination System (“NPDES”) permit.⁸² Failing to comply with the NPDES permit process is also a violation of the CWA.⁸³ The

⁷⁵ N.M. Code R. 20.2.23 (“Fugitive Dust Control”) (2019), <https://www.env.nm.gov/wp-content/uploads/2018/12/20.2.23-NMAC-1.pdf>.

⁷⁶ N.M. Code R. 20.2.23.109.

⁷⁷ We Build the Wall, “A Job Well Done With A Lot More To Come,” YouTube (June 13, 2019), https://www.youtube.com/watch?time_continue=1&v=jWdOmVzBWLl.

⁷⁸ N.M. Code R. 20.2.23.112.

⁷⁹ 33 U.S.C. § 1251(a).

⁸⁰ *Id.* §§ 1311(a) (“the discharge of any pollutant by any person shall be unlawful”), 1342 (permits), 1362(12) (defining the discharge of any pollutant).

⁸¹ *Id.* § 1362(6).

⁸² *Id.* §§ 1311(a), 1342(a)(1).

⁸³ *Id.* § 122.41(a) (“Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action.”).

applicants have constructed a giant steel gate that is just feet away from the Rio Grande. It appears that the applicants have yet to conduct a stormwater runoff study, let alone obtain an NPDES permit. Given the proximity of the gate to the Rio Grande, the construction project raises serious questions about the applicants' compliance with the NPDES permit process and the CWA.

IX. The gate and fence construction's proximity to the American Smelting and Refining Company's El Paso Smelter Superfund site raises serious concerns under all of the environmental laws discussed in this letter.

Ten years ago this month, on June 5, 2009, the U.S. Bankruptcy Court for the Southern District of Texas approved a settlement providing for a \$52 million trust to clean up the American Smelting and Refining Company ("ASARCO") in El Paso, Texas.⁸⁴ The Court approved the settlement under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA" or "Superfund")⁸⁵ and the Resource Conservation and Recovery Act ("RCRA").⁸⁶ The IBWC participated in the claims process for the ASARCO Superfund, specifically raising concerns about the cost of "the need to address metals-contaminated groundwater emanating from the former ASARCO El Paso smelter complex in connection with proposed construction projects on the American Canal, a man-made waterway connected to the Rio Grande River in El Paso, Texas."⁸⁷ The fund provides for "an allowed general unsecured claim of \$19,000,000" for the U.S. government to ensure the remediation of the soil and address groundwater contamination.⁸⁸ The proximity of the ASARCO Superfund site to the large-scale construction project raises serious concerns about the movement of metals-contaminated soil. In considering the permit application, the IBWC must also consider serious, site-specific contamination that may stem from the ASARCO Superfund's contamination of soil and groundwater on IBWC-managed land.

IBWC Should Coordinate with Federal and State Agencies to Stop Unlawful Conduct and Require Remediation.

The applicants' unlawful conduct is breathtaking: twice, they have engaged in major construction projects in Sunland Park without first obtaining necessary permits under state and federal law. If the government continues to permit the applicants' conduct to go unchecked, it will set a dangerous precedent, emboldening the applicants and other extremist groups to take federal land for their own private purposes while violating a myriad of federal laws. The IBWC should coordinate with federal agencies, including the U.S. Attorney's Office for the District of New Mexico and the U.S. Department of Justice, to prevent the applicants from continuing to

⁸⁴ *In re ASARCO LLC*, No. 05-21207, 2009 WL 8176641 (Bankr. S.D. Tex. June 5, 2009).

⁸⁵ 42 U.S.C. §§ 9601 *et seq.*

⁸⁶ 42 U.S.C. §§ 6901 *et seq.*

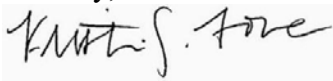
⁸⁷ *In re ASARCO LLC*, No. 05-21207, 2009 WL 8176641, at *34.

⁸⁸ *Id.*

violate federal laws, prevent them from blocking access to Monument One, and require them to remove the gate and remediate the environment.

We are deeply concerned with the secrecy shrouding what should be a public permitting process. We would welcome the opportunity to discuss this matter further. Please contact us with any questions.

Sincerely,



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